SUPREME COURT, U. S.

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APPENDIX

IN THE

Supreme Court of the United States

OCTOBER TERM, [redacted] 1970

No. [redacted] 97

RALPH PICCIRILLO,

Petitioner,

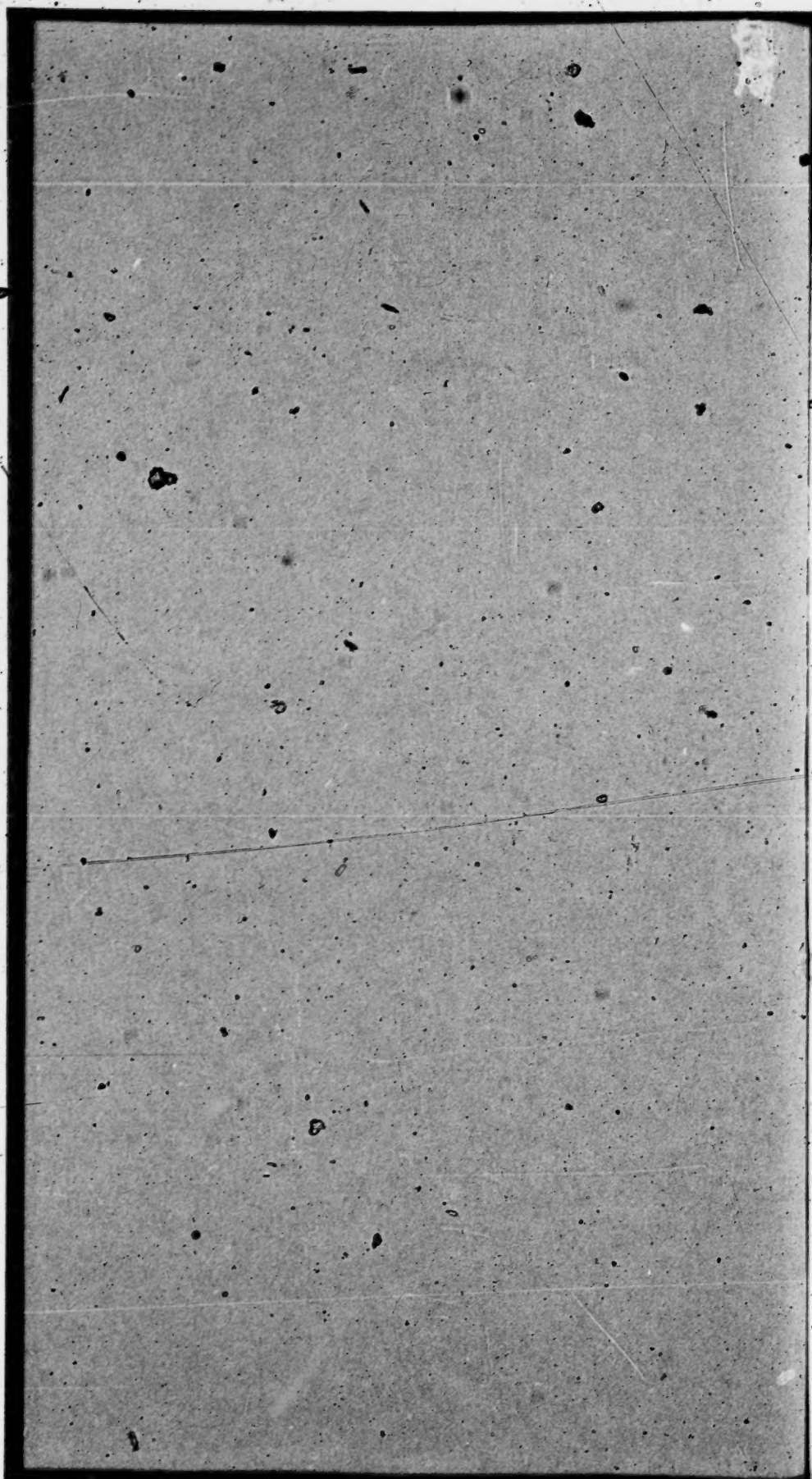
—v.—

NEW YORK

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS OF NEW YORK

PETITION FOR WRIT OF CERTIORARI FILED JULY 19, 1969

CERTIORARI GRANTED FEBRUARY 27, 1970



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[fol. 2] IN THE SUPREME COURT OF THE STATE OF NEW YORK, KINGS COUNTY

93/1965

Investigation into the assault on JACK GRAHAM, and the conspiracies arising therefrom.

MINUTES OF MARCH 48, 1965

Appearances:

AARON E. KOOTA, ESQ.
District Attorney

By:

EDWARD A. PANZORELLA, ESQ.
Assistant District Attorney

EDWARD MINTZER
Grand Jury Reporter

* * * * *

[fol. 5] ANTHONY LA BELLO, residing at Sing Sing prison, was duly sworn as a witness and testified as follows:

BY MR. PANZORELLA:

Q Mr. LaBello, this grand jury is here for the purpose of investigating an assault committed on Jack Graham on March 19, 1964 and investigating any and all conspiracies that might be connected with the assault on Jack Graham. You were indicted and convicted on your own plea of guilty to the crime of attempted assault in the second degree before Justice Barshay on September 9, 1964, were you not?

A I refuse to answer on the grounds that it might incriminate me.

Q Mr. LaBello, Section 2447 of the Penal Law provides for witness's immunity. That says, that section of law says, that a duly constituted grand jury such as this grand jury has the right to confer immunity upon

a witness before it in a proceeding. In the usual way in the sense of the word, your case is slightly different. You were convicted of that crime by your own plea of guilty and you were sentenced by Judge Barshay and [fol. 6] you are now serving the sentence for the crime. You cannot be prosecuted again for that crime. This investigation deals with what you already confessed and admitted to the Judge that you did. You don't need immunity. However, I'm going to have this grand jury vote whether or not they will confer immunity for the testimony that you will give this grand jury and that means this: You have been already sworn as a witness. Anything that you testify to in this grand jury, any legal evidence that you give pursuant to any question that I put to you in this grand jury for the answer you cannot be prosecuted. Therefore, because this grand jury when it votes will confer immunity upon you for prosecution of your answers. Do you understand what I'm talking about?

A Yes. I'd like to see my attorney.

Q I * * * will have this grand jury vote whether or not they give you immunity. I will then put a question to you and from thereon if you refuse to testify I will take you before Mr. Justice Shapiro who I believe is sitting in Part 1 and ask you be held in contempt of this grand jury for refusing to answer legal and proper questions. Now, will you step outside a minute, [fol. 7] please.

(Whereupon, the witness, Anthony LaBello, Mr. Panzorella and the reporter left the room.)

(Upon being summoned to return the witness took the stand and testified as follows:)

BY MR. PANZORELLA:

Q Mr. Foreman, have you and the grand jury voted on the question of the granting of immunity to this witness pursuant to Section 2447 of the Penal Law?

THE FOREMAN:

A Yes.

MR. PANZORELLA:

Q How did the grand jury vote?

THE FOREMAN:

A We voted to grant this man immunity.

BY MR. PANZORELLA:

Q Now Mr. witness, did you understand the Foreman of the grand jury?

A I understood him, yes.

Q Do you understand that you cannot be prosecuted for the answers you will give to any questions put to you in this grand jury? Do you understand that?

[fol. 8] A Yes.

Q I therefore ask you again sir, did you plead guilty to the crime of attempted assault in the second degree before Mr. Justice Barshay in the Supreme Court of Kings County and in that plea admit that you together with another assaulted Jack Graham with a weapon?

A Mr. Panzorella, I'm granted immunity, any paper supposed to be signed any way?

Q No, it's in the grand jury record.

A Yes.

Q Is that the answer to the question, sir?

A You want to put it to me again?

Q Will you repeat the question again Mr. Reporter?

(Whereupon the last question was read back by the reporter.)

Q What is your answer Mr. Witness?

A Yes.

Q Mr. Justice Barshay sentenced you after your plea of guilty?

A Yes.

Q How much of a prison sentence did you get?

[fol. 9] A One year three months, 2½.

Q To two years six months?

A Yes.

Q In Sing Sing Prison?
A Yes.
Q That is where you are presently confined, is that correct?
A Yes.
Q Now, sir, do you recall March 19, 1964? Do you recall that date?
A No.
Q Do you recall that on that date you were arrested for the assault of Jack Graham?
A Oh, the date I didn't remember but I was arrested.
Q On that day, at about 10 o'clock, in the morning together with someone in Brooklyn?
A Yes.
Q Was that other person Ralph Piccirillo?
A Yes.
Q And were you in the vicinity of Blake Avenue and Stone Avenue in the County of Kings, State of New York?
A Yes.
[fol. 10] Q Is that location, Blake Avenue and Stone Avenue, a parking lot in connection with a housing development?
A Yes, sir.
Q And at that time were you armed with a weapon?
A Yes.
Q What was it that you had?
A A tire iron.
Q Where had you obtained the tire iron?
A Someone gave it to me.
Q When?
A That day, that morning.
Q When?
A Right over there, I don't know if it's Blake.
Q Who was it that gave it to you?
A Some fellow that called himself Tony.
Q Had you met this Tony before you met him that morning? How did you meet him?
A I wasn't working. I was having coffee in a cafeteria down on Canal Street.
Q Yes?

A I was having coffee. There was no work that day [fol. 11] and this man come up to me, he sat down, started talking. "You're out of work?" "Yes, I'm out of work today," He says, "You're out of work often?" I said, 'Well, on bad days, not many trucks come down." He said, "Would you like to make a few dollars?" So I said, "Yeah, I'm willing to work." So he explained it to me. That was it. He promised me money.

Q Now, I want to advise you this at this time that this grand jury conferred immunity on you for the testimony that you give here that may connect you with the commission of a crime but the grand jury cannot confer immunity on you for any perjury that you comit. In other words, if the testimony that you give before this grand jury is a lie, you can be prosecuted for the lie because neither this grand jury nor any court can forsee when you may lie or comit perjury when you answer any question. Now, do you understand me?

A Yes.

Q Now, where did you live? What was your home address at the time that we are talking about, March 19, 1964?

A 846 43rd Street, Brooklyn.

[fol. 12] Q Where did Ralph Piccirillo live?

A He lived in Brooklyn, I don't recall the address.

Q Had you known Ralph Piccirillo for some length of time?

A Yes.

Q How long?

A Quite a few years, I don't remember. We went to school and I know him from the neighborhood.

Q Isn't it the truth that Ralph Piccirillo was living at 13 Manhattan Avenue in Union City, New Jersey at this time?

A I wouldn't know. I know he lives in Brooklyn.

Q Where did you meet Ralph Piccirrillo on the morning of March 19, 1964?

A Holland Cafeteria.

Q Where is that located?

A On Canal Street Between Hudson and Varret.

Q What time in the morning was it that you met, if it was the morning?

A It was about 6:30 in the morning.

Q What were you doing there?

A It's a place where we go for work.

[fol. 13] Q In the cafeteria?

A They disptach the trucks from there through a telephone. See, trucks come in from upstate and they come over there and the steward of the job dispatches them from there.

Q Who dispatches?

A Who?

Q Who?

A A steward of the job. It's Charles Bannanti (phonetic spelling).

Q Bannanti?

A Bannanti.

Q You are a union member?

A Yes.

Q What local?

A 560.

Q Of what?

A Teamsters Union.

Q In other words, you are saying that you shape up at this restaurant?

A Well, I don't actually shape up there. I work in Jersey City for Service Trucking. I used to work a few [fol. 14] days with Rufello (phonetic spelling) Trucking. These two jobs. When one is slow, like I go over to Jersey. If they need men in Jersey, the guys from New York go to Jersey; if they need men in New York, the same thing.

Q On this morning, you are in New York?

A Yes.

Q You say you met there in that Hudson Cafeteria?

A Holland.

Q Holland Cafeteria a man by the name of Tony?

A Yes.

Q Was he a union member?

A I don't know. I had never seen him.

Q Never saw him before?

A I might have seen him once in the place or twice but I don't know what he was doing.
Q Did you see him shape up on the job too?
A No, he never shaped up.
Q Never shaped up on the job?
A No.
Q Did you ever see him in New Jersey?
A No.
Q Can you describe Tony for us?
[fol. 15] A A little bigger than me.
Q How tall?
A I think I am 5'5". I'd say about 5'8", 5'8½. High forehead.
Q Sir?
A High forehead.
Q What color hair?
A Black hair.
Q Wavy or straight?
A I couldn't tell you if it was straight or wavy.
Q Why can't you tell us?
A I don't recall.
Q Was he wearing a hat?
A No.
Q How was he dressed?
A He had a dark coat on, dark clothes.
Q Full overcoat?
A Yeah, sort of an iridescent raincoat.
Q What was the color of his skin?
A White. What would you call it?
Q Was he dark skinned, light skinned, fair, ruddy?
A I would say fair.
[fol. 16] Q Did he have a mustache?
A No.
Q Color of his eyes?
A I don't recall.
Q How about his ears, were they close to his head or away from his head?
A I wouldn't know.
Q Any scars on his face?
A No.

Q What was the shape of his nose?
A I don't know how to put it, the shape.
Q Was it a big nose or a little nose?
A Well, it was no big nose?
Q Was it a little nose?
A I don't know what you mean, "Was it a little nose?"
Q Was it broad?
A No, it wasn't broad.
Q Was it thin?
A No, it wasn't thin.
Q If it wasn't thin, it was what, it wasn't broad?
A It was a regular nose.
[fol. 17] Q Medium? Any hook in the nose?
A No.
Q Did the nose look as though it had been broken?
A No.
Q You are sure about this?
A Yeah.
Q Did he wear a beard?
A No.
Q Clean shaven?
A Yeah, average.
Q Was he clean shaven or did he need a shave?
A He had a little hair on his face. He didn't really need a shave. He can do without it.
Q Was he young or old?
A I'd say in the thirties, thirty-five, thirty-six.
Q How many pounds would you say he weighed, about?
A I don't know, about 190, 180.
Q He was heavy set?
A Well, he was like a little broad or something, good build.
[fol. 18] Q What about his hands? Did you see his hands?
A Yes, I saw his hands.
Q Were they big hands or little hands?
A Well, they weren't little, they were big.
Q They were big?
A They were big, they weren't little.

Q Were they clean or dirty?
A They were clean.
Q Did you shake hands with him?
A No.
Q Did he have calluses on his hands?
A That I wouldn't know.
Q Were his hands hairy or not?
A Well, his hands weren't hairy, not that I recall. I don't think so.
Q Are your hands hairy?
A No.
Q Were they like your hands?
A Yeah, I got no hair at all on my hands, might have been a little bit.
Q How long did you talk to Tony?
A I guess for about an hour or so.
[fol. 19] Q Did he speak with an accent?
A No.
Q Was he an educated type of fellow?
A No.
Q How did he talk?
A What do you mean? I don't know what you mean?
Q I withdraw the question. Did he have a high voice, a medium voice, or a low voice?
A All we were doing was talking low.
Q Did he talk like you?
A Yes.
Q Or did he raise his voice high more toward the girlish type of voice?
A No.
Q Or did he have a very low voice, lower than yours in tone?
A I wouldn't know, I don't recall.
Q How about his lips? Were they thick or thin?
A They weren't thin.
Q What were they?
A They weren't big or anything, they were just normal.
Q Normal?
[fol. 20] A Normal.
Q Did he have a big mouth or small mouth?
A It would be normal, I don't know.

Q What was the conversation between you and Tony?
A He asked if I wanted to make some money. So I said I would like it. So he explained the situation.
Q Tell us. Don't say he explained the situation, what situation? Tell us the whole story as you remember it.
A He says that he wanted to make some money so I said, "Yes."
Q How much?
A $50.
Q $50 for you or $50 complete?
A $50 for me.
Q And $50 for Piccirillo?
A Yes.
Q So that's a hundred dollars?
A Yes.
Q And you said sure?
A I said sure.
[fol. 21] Q What did Piccirillo say?
A The same.
Q Did you ask what we have to do for this or what do I have to do for this?
A I asked, yes.
Q What did you say?
A What do you mean, what did I say?
Q What did you say to the man when he said to you do you want to make some money. You said yes?
A Yes.
Q Did you say well, how much money am I going to make?
A Yes.
Q You asked him that?
A Yes.
Q What did you say? Repeat your own words.
A How much money will I make?
Q And he told you what?
A $50.
Q Then what else did you say to him? Did you ask him what do I have to do to earn $50?
A Yes, I asked him that?
[fol. 22] Q How did you put it? What were your words?

A I asked him what do I have to do?

Q I'm not putting words in your mouth, am I? I am not testifying here you are the one that is testifying. Tell us the whole thing. You tell us everything, all the words that you remember that he said, that you said, that Piccirillo said. Tell us the whole story as though it was happening right here and now, tell us.

A He asked if I wanted to make some money. I said yes. I asked how much. He says $50. So I ask him, you know, what do I got to do? So, he told me, well, first he would take us over into Brooklyn and then he explained it.

Q Wait a minute. You are going onto something new. We are still in the restaurant in New York. What happened in the restaurant in New York? That's what we want to know first before you take us to Brooklyn.

A Well, he didn't actually say anything in the restaurant. He says—we were just talking for a little while there.

Q About what?

A I don't recall about what. Then he started to get on with hitting somebody.

[fol. 23] Q This is in New York?

A What?

Q In New York this went on, in the restaurant.

A Yes.

Q How did he say it?

A He says I would like to—you know, he says I want you to hit somebody for me.

Q What did you say?

A I said, what do you mean? And so he says no, not hurt anybody real bad, just hit somebody. You know.

Q What do you mean, "hit"? You know this grand jury has been sitting a long time and the word "hit" to them, what they have been hearing is that when you hit somebody you kill them. That's the usual expression. You tell us, it's your story.

A He said to hit somebody. I don't recall any other words in between.

Q How were you going to hit him?

A With a tire iron just in the legs.

Q Did he say why?

A I asked why and—you know, he just didn't answer. He said never mind.

Q You agreed?

[fol. 24] A Yes.

Q For $50?

A Yes.

Q Did you collect your money in advance?

A No.

Q You had a conversation about when you were going to get paid?

A That came after. He says after it happened.

Q He told you this?

A Yes.

Q What did Piccirillo say?

A I believe he went along with me.

Q You believe? Did you hear him say anything?

A I don't recall anything.

Q Did you talk to Piccirillo? Did you say to Piccirillo what is this this guy is trying to get us in? We got to him somebody with a tire iron, did you say that?

A We might have said a few words.

Q Not what you might have said, I don't want to put words in your mouth. I want you to tell me the story. What did you say if you said anything?

A I don't recall, I don't recall.

[fol. 25] Q Did you talk to Piccirillo about it?

A I don't recall. I probably did but I don't remember any words.

Q Did Tony show you the tire iron there in the restaurant?

A No.

Q How did you know there was a tire iron to be used?

A He said it.

Q He told you?

A Yes.

Q He said to you I want you to use a tire iron or words to that effect?

A Yes.

Q Did he?

A Yes.
Q How did he say it?
A That was in the car, I don't recall how it was said.
Q What kind of a car?
A It was an old Ford.
Q What year?
A I can't say exactly. But it wasn't no new car.
[fol. 26] Q Did you know the year of the car once?
A I think it was a 1953 or a 1954.
Q What color?
A Black.
Q All black?
A I think black and white.
Q Was it a roadster?
A I don't know what you mean by "a roadster"?
Q An open car?
A What do you mean? A convertible?
Q Yes.
A No.
Q Two passenger, four passenger?
A Two passenger, I think so.
Q Two passenger's? Only two people get in it?
A Two door, I thought you meant.
Q Was it a station wagon?
A No.
Q Do you know what a station wagon is?
A Yeah.
Q What is your usual occupation?
A I'm a trailer driver.
Q You drive?
[fol. 27] A Yes.
Q Did you ever have a car of your own?
A Yes.
Q How long are you driving?
A What do you mean how long am I driving?
Q How long have you had a license to drive an automobile?
A I don't recall. Four years. I don't recall just exactly, five years.
Q When you were eighteen?
A No, I was younger.

Q You were younger than eighteen when you had a license?

A Yes.

Q You are how old now?

A Twenty-two.

Q Were you twenty-one last March?

A Yes.

Q You were driving three, four years? Four years would bring you down to about 17?

A Yeah, I believe 17, about 17 or even 16 I think.

Q Where did you get your license?

[fol. 28] A Motor Vehicle, New York.

Q Do you know the difference between automobiles?

A Do I know the difference?

Q Yes, between automobiles? Between one automobile and another automobile? Do you know the difference between a Foard and A chevrolet, or a Ford and a Cadillac?

A Yeah.

Q So you got in the car, a Ford?

A Yeah, I believe so.

Q Where did you sit in the car?

A In the back seat.

Q Who drove the car?

A Tony.

Q Where did Piccirillo sit?

A Alongside of him.

Q In the back?

A The front.

Q Did you say anything to the business agent or whatever the fellow who takes care of the shaping up is? Did you tell him you were leaving?

A He was already gone. The job starts at 7 o'clock in the morning.

[fol. 29] Q You had no work for that day? Is that what you are telling us?

A No.

Q Which way did you drive? Do you know Brooklyn streets?

A No.

Q You don't know Brooklyn Streets?
A I know a few streets. I live there.
Q You drove for four years, maybe a little more than four years, you had your own license?
A Yes.
Q Your own automobile?
A Yes.
Q How many automobiles did you own?
A One.
Q What kind was it?
A An old DeSoto.
Q When?
A Last year I think it was, sir. It was last year or—last year I think so, yeah.
Q Did you drive other people's automobiles? Friends automobiles?
[fol. 30] A Do I?
Q Did you?
A Did I?
Q Yes.
A I drove my brother-in-law's car.
Q What kind?
A 1957 Pontiac.
Q From the time you got your license, did you drive automobiles?
A From the time I got my license?
Q Yes.
A In other words, I had my license?
Q Yes.
A Did I drive automobiles?
Q Yes.
A Yes.
Q How many about?
A I don't know. I couldn't—
Q Did you drive any trucks?
A I drove a truck.
Q When did you start driving a truck?
A I think it was last year.
[fol. 31] Q What did you do before that?
A I worked on the platform.

Q Where?
A Service trucking.
Q Where?
A Jersey City.
Q How would you get to Jersey City?
A Through the Holland Tunnel.
Q By automobile?
A By automobile, hitch a ride.
Q How long did you drive a truck for Service? Were you working for Service as a truck driver?
A Yes.
Q Where was your route?
A Well, driving a trailer could have went anyplace.
Q Like where?
A Come into New York, in New Jersey, the Bronx.
Q Brooklyn?
A Brooklyn, Queens.
Q How big a truck was it?
A Well, the trailers were 40 footers.
Q What would you transport in the trailer truck?
[fol. 32] A Canned goods, frozen foods.
Q Where would you drop off this stuff?
A All different places.
Q Like what?
A A & P's.
Q Different locations of A & P's?
A Yeah, warehouses.
Q Where are some of the warehouses of A & P?
A There is one on Decatur Street in Brooklyn, there's an A & P at Port Newark, New Jersey.
Q I mean here in Brooklyn?
A You are saying here in Brooklyn?
Q Yes.
A Decatur Street.
Q Is that the only place you ever dropped off stuff when you were driving a truck in Brooklyn?
A I wouldn't say it was the only place.
Q Where else?
A We delivered to Brooklyn piers.
Q Where are the piers in Brooklyn?
A Port authority piers.
Q Where?

[fol. 33] A I believe it's Bergen Street or something.

Q Where would you start off from driving the truck?

A Where would I start off from?

Q Yes.

A Jersey City.

Q How would you get to Manhattan?

A Come right through the Holland Tunnel or we could use the Lincoln Tunnel or George Washington Bridge I guess.

Q You mean you use the Holland Tunnel, where would that let you off? Canal Street? Did you ever hear of Canal Street?

A Yes.

Q Did you ever use Canal Street?

A Holland Tunnel can take you out—you can hit Hudson Street.

Q Where is this Holland Cafeteria?

A On Canal Street.

Q And what other street?

A It's Canal Street. It's between Varick and Hudson Streets.

Q That's right by the Holland Tunnel exit and en-
[fol. 34] trance, isn't it?

A Just around the corner.

Q That's why you met there, isn't it, because it was so convenient to the tunnel?

A There's a bunch of friends. We are all from the job. We stop and have coffee. When I went over to Jersey sometimes I stood in New York and used the phone if I was working that day if it reached me.

Q Did I understand you to say that you went to the Holland Cafeteria because it was like a shape up place?

A It was a shape up place for the New York jobber.

Q That's right?

A Yeah, you used to work out of a phone booth. The shop steward used to meet there with his men.

Q You got into this Ford automobile with this Tony and Ralph Piccirillo, anybody else?

A No.

Q And Tony drove?

A Yes.

Q Which way did he come to Brooklyn?
A Manhattan Bridge.
[fol. 35] Q Then what? Did you recognize any of the streets?
A Flatbush Avenue.
Q Yes? How did you get out to Blake Avenue?
A Tony drove me.
Q Did you watch the streets?
A I just watched them. I was just looking out the window, that's all.
Q Did you recognize any of these streets?
A I'm not too familiar.
Q You got to Blake Avenue?
A Yes.
Q While you were driving along, you were looking out the window, was there any conversation, any talk?
A There might have been a few words in the car but I can't recall it.
Q Did you wonder where you were going?
A Yeah, I wondered where I was going. I just sat.
Q Did you wonder whether you were being kidnapped or something?
A I wasn't thinking at that time.
Q Is it your usual practice to contract and get paid [fol. 36] for hitting somebody?
A No.
Q Did you ever hit anybody before this time?
A No.
Q So out of a clear blue sky you take a contract to make a hit?
A I needed the money.
Q That's what you want this grand jury to believe as your testimony, is that correct?
A I don't understand.
MR. PANZORELLA: I withdraw that question.
Q Now, you got to a location in Brooklyn?
A Yes.
Q You got out of the car?
A Stood in the car a while.
Q Yes, what happened?
A Waiting for this man to come.

Q Did you know who it was going to be?
A No.
Q Were you told the name of the man?
A No.
[fol. 37] Q Did you get a description of the man?
A No.
Q What was supposed to happen?
A The man came.
Q No, No. What was supposed to happen? What did Tony say to you while you were sitting in the automobile, the three of you were sitting in the automobile by a housing project? Is that right or were you in the parking lot?
A By a housing project.
Q Any police around?
A Not that I seen, no.
Q Where were the weapons?
A They were in the car.
Q Where, front seat, back seat?
A I don't recall where it was.
Q Where did you get your weapon from?
A This Tony.
Q He handed it to you?
A Yes.
Q Where did it come from?
A He must have had it in front with him.
[fol. 38] Q Did he give you something?
A Yes.
Q This tire iron?
A Yes.
Q Just like that, handed it to you?
A Yes.
Q What did you do with it? In other words, did you get out of the car, hold this tire iron in your hand, and walk the street?
A No, I didn't hold it in the air.
Q What did you do with it then?
A Just held it in my hand.
Q How were you dressed?
A Work clothes.

Q Work clothes?
A Regular clothes.
Q Did you have a coat on?
A No.
Q A jacket?
A Jacket.
Q Zippered jacket?
A No, I don't think so.
[fol. 39] Q Three quarter jacket?
A No, regular jacket.
Q Leather?
A No.
Q Cloth?
A Cloth it was.
Q Did you hide the weapon under your jacket?
A I didn't hide it under my jacket. I just had it in my arm by the arm.
Q You slipped it under your arm?
A No, I just had it on my arm like this.
Q You were hiding it?
A Yeah, as I am walking across the street.
Q Were you swinging it in your arm or did you hold it close to your body?
A No, I just walked with it.
Q What did Piccirillo have?
A I believe it was the same thing.
Q Do you know what a tire iron is?
A I what?
Q Tierod?
A A tierod?
Q Yes.
[fol. 40] A No.
Q You don't know what a tierod is?
A No, I don't understand, "a tierod."
Q And you are a truck driver?
A Yes.
Q What steers a car or truck?
A I'm just a truck driver, I'm no mechanic.
Q What steers an automobile or truck if you know?
A If I know?
Q Yes.

A The Steering wheel.
Q What is the steering wheel connected to?
A The names, I don't know.
Q Aren't you interested?
A No.
Q Did you ever work on an automobile?
A No.
Q Never?
A Put oil in the car, that's about it.
Q Your own car?
A Yeah.
[fol. 41] Q Your brother-in-law's car?
A I put oil in my brother-in-laws car.
Q Your friend's car?
A I wouldn't know if I put oil in.
Q Did you ever hang around any gas stations?
A I don't believe so. I stood near a garage.
Q Whose garage?
A On Kenmare Street.
Q In Manhattan?
A Kenmare and Mulberry.
Q What is the name of the owner?
A I don't know the owner. I just stood near it. There used to be an old man that worked in there, an old colored fellow. I don't know his name. His name was Pop. He used to tell us stories. That's before I was married.
Q How about around your home in Brooklyn?
A How about what?
Q Any gas stations around?
A Is there any gas stations around?
Q Yes.
A Yeah, there's gas stations there.
Q Close by?
[fol. 42] A Five blocks, four blocks.
Q Where did you gas up?
A I gassed up in Brooklyn, Jersey.
Q You didn't have a favorite place close by home?
A I don't know what you mean by "favorite". When I needed gas I pulled in.
Q Any special gas?
A No.

Q Any garages around your house?
A There's a gas station and garage.
Q Which one?
A On 39th Street and 9th Avenue there is a garage.
Q Do you know any of the fellows there?
A I just know them by sight, I don't know their names. Waxman's Garage.
Q Waxman's?
A Waxman's.
Q Any of your friends work there?
A No.
Q Never worked on any cars, you?
A No, I don't know nothing about mechanical work.
[fol. 43] Q Now, Piccirillo had an iron, a piece of iron?
A Yes.
Q Can you describe it?
A It was skinny in the middle and fat on two ends.
Q In other words, the ends are fatter than the middle?
A Yes.
Q How long was it?
A I don't know. They are this long. (Indicating).
Q You don't know?
A I don't know how long.
Q Was it two inches long?
A No, it wasn't two inches long.
Q Was it a foot long?
A It might have been a foot.
Q Or was it over two feet long?
A I don't think it was over two feet long.
Q You are sitting in a car, not in a parking lot?
A In a car.
Q Not in a parking lot, in the street?
A In the street.
[fol. 44] Q Which street? Blake Avenue or the other one?
A I believe it's Blake Avenue.
Q What happened?
A We sat there for a while until this man pulled up into the parking lot and Tony said, "That's the man in the white car."

Q White car?
A Yes.
Q Could you see where the man parked?
A Could I see where he parked?
Q Yes.
A I don't recall. He parked in the parking lot.
Q Then, what did you do?
A I got out and walked into the parking lot.
Q With Ralph Piccirillo?
A Yes.
Q Did you walk up to the car?
A No, the man was out of the car already.
Q You walked up to him?
A Yes.
Q Say anything to him?
A No.
[fol. 45] Q Did you call him by name?
A No.
Q Did you know his name?
A No.
Q Did you hit him?
A Yes.
Q With what?
A Tire iron.
Q Where did you hit him?
A In the legs.
Q Did Ralph hit him?
A Yes.
Q Where?
A I believe it was the legs or the side of the arm?
Q Did you hit him in the head, you?
A No, I don't recall hitting him in the head.
Q Ralph hit him in the head?
A I don't know.
Q Did the man fall?
A Yeah, I believe he did fall.
Q How many times did you hit the man?
A I don't know, about four times.
[fol. 46] Q Always in the legs?
A Yes, in the legs.
Q Did you recognize the man?

A I recognized him.
Q Is he the man you hit?
A Yeah, I believe so.
Q What part of the legs did you hit him in?
A On the side.
Q Where?
A On the side.
Q You were close by his automobile when this happened or were you out in the open?
A It was in the open.
Q Were you facing the man?
A Yeah.
Q Face to face or was his back turned to you?
A It was face to face.
Q While you were facing him, was Ralph Piccirillo with you?
A Yes.
Q Was Ralph on your right side or on your left side?
[fol. 47] A He was in front of me.
Q Who?
A Ralph was in front of me.
Q He was in front of you?
A Yes.
Q And you had to reach over Ralph to hit the man in the leg or what?
A I went alongside of Ralph and I hit the man in the leg.
Q Now, then you went alongside of Ralph, where was Ralph? On your left side or on your right side?
A I believe it was the left, left side.
Q He was on your left side?
A I believe so.
Q How were you swinging this iron? Stand up.
A What do you mean?
Q Stand up. You have the iron in your hand?
A Yes.
Q How were you swinging it? Show this jury.
A In the leg, that's all. (indicating)
Q The man was standing, is that right?
A Yes.

[fol. 48] Q In front of you, facing you?

A Yes.

Q So, where did your blows hit him?

A In the legs.

Q Over here?

A Over here (indicating).

Q It would be the left side of the man's body?

A I imagine so.

Q Don't imagine, was it? I am asking you a direct question. What part of his body did you hit him in?

A I think it was the left side; the left side, must be. The man fell down.

Q Did you hit him on the head?

A No, I didn't hit him on the head. Maybe it slipped or something. That was it. The iron fell and I ran.

Q You dropped the iron?

A Yes.

Q Was the man bleeding from the head when you looked at him?

A I turned around and he was bleeding from the head.

Q Where did you run to?

A Well, I turned around and looked to see if this [fol. 49] Tony guy was still in the car and there was nobody there.

Q What happened?

A I ran away. I don't remember in which direction. I don't remember if I ran through the project or what.

Q What happened?

A A policeman caught me.

Q You were taken to the police station?

A I was taking to the housing project police, the police station.

Q When you were in the police station, did an Assistant District Attorney come to the police station to question you?

A Did he come?

Q Yes.

A I believe it was an Assistant District Attorney.

Q There was a man with a machine similar to this reporter here taking questions down and the answers that you gave?

A Yes.

Q Did you tell the Assistant District Attorney that you asked this man how much money was going to be paid, did you tell him $50 you were going to get paid?

A I don't recall if I told him.

[fol. 50] Q Did you say in answer to a question, and this is page 8 of the stenographic statement number 19050 taken at the 73rd Precinct, on March 19, 1964, at about 7:43 p.m., by Assistant District Attorney Leon Port, Anthony Vonofforio, Hearing Reporter, and on page 8, "Question—What happened after that?" Your answer, "We were in the Holden Cafeteria." Now, I stop here a minute and ask you, is this the same cafeteria that we are talking about?

A It's Holland.

Q Holland?

A Yes.

Q "And some man came in and approached us and asked us if we wanted to make a few dollars and we said yeah, and we said how much and he said that we would be well taken care of, don't worry about it." Is that right?

A Yeah.

Q Then the question was put to you, "You didn't ask how much?" And you answered, "I asked how much and he said we would be well taken care of." Do you remember that?

A Yeah, I remember that there but I—

Q You didn't remember about the $50 then?

[fol. 51] A I was in quite a bit of a daze at that time.

Q Why?

A Why?

Q Yes.

A I was beat.

Q By who?

A Police officers, detectives.

Q How many?

A I say about six.

Q They beat you?

A Yes.

Q What kind of beating? Did you have any marks on you?

A Nothing to—I had a little mark near my ear but it was just a—

Q Wasn't that mark near your ear when Jack Graham got a hold of you, when the man that you were beating with the tire iron grabbed you by the neck?

A No.

Q He didn't grab you by the neck?

A No.

Q Didn't touch you?

[fol. 52] A No, not that I remember, didn't touch me.

Q Did you have any other marks on your body?

A I might have had one or two marks on my back, but—

Q Did you tell the Assistant District Attorney that you were beaten up?

A No, I didn't tell tell him then and there.

Q Did you tell the Correction Department when you were taken into jail the next morning, when you were going for arraignment before a judge and they asked you, you didn't tell them in jail?

A Who asked me?

Q The Correction Department in the pen behind the felony court; you were taken to felony court, weren't you?

A Yeah, I was arraigned or set bail or something like that.

Q In the pen there before you got to the courtroom, didn't the correction officer ask you whether you were complaining about anything?

A I don't recall if he did.

Q Did you make a complaint?

A I don't think I made any complaints.

[fol. 53] Q You don't recall that?

A I don't recall it.

Q All right. Now, you appeared before the judge?

A Yes.

Q Did you tell the judge that you were beaten up?

A I don't believe I said anything. I just went for bail.

Q Did you have a lawyer?
A No.
Q No lawyer?
A I didn't have no lawyer before that, no.
Q Did you ask that a lawyer be assigned to you?
A Did I ask if a lawyer be assigned to me?
Q Yes.
A No, I just made bail. That's all.
Q Who made bail?
A What do you mean, "who made bail?"
Q Who made bail for you?
A My mother was in the courtroom.
Q Without a lawyer?
[fol. 54] A Without a lawyer.
Q The judge talked to you?
A I don't remember what he said if he did speak to me.
Q Did you plead guilty or not guilty?
A I don't recall.
Q You don't recall what happened in that court?
A No, I don't recall. I can't put it in my mind. I know the day I made bail.
Q How much bail?
A A thousand dollars bail.
Q Who set that?
A Who set it?
Q Yes.
A The judge.
Q You heard the judge say that?
A A thousand dollars bail.
Q You didn't hear anything else?
A No, I don't remember hearing anything else as far as that goes.
Q You don't remember being asked how do you plead in this case, guilty or not guilty?
[fol. 55] A No, I don't remember being asked that there. No I don't. I don't remember right then.
Q Do you know Carl D'Angelo?
A Yes.
Q Who is he?
A He is an attorney.
Q Your lawyer?

A Was.
Q At that time?
A Not just at that time, no.
Q Not just at that time?
A No, I was in the police station all night and I came out and I went in front of the judge and that was it.
Q Carl D'Angelo wasn't there?
A No, I didn't have him yet.
Q Who is Antoinette LaBello?
A My mother.
Q She put up bail for you through a bondsman; is that correct?
A Yes.
Q Did you get out on bail?
A Yes.
[fol. 56] Q Right away?
A A few hours later. I guess about 5 o'clock in the afternoon, 5:30.
Q Did you tell anybody you got beat?
A I told my mother as soon as I got outside.
Q Who else did you tell?
A I told the attorney when I seen him.
Q When did you see the attorney?
A Well, I think I went back to court the following week. I went with no attorney, I didn't have any attorney yet. They jacked up the bail another thousand dollars and I went in until my time and then I got out again. The next time I went I went with Carl D'Angelo.
Q Did you tell Carl D'Angelo that you got beaten by the police?
A Did I tell him?
Q Yes.
A No.
Q Did you tell any judges about that?
A I don't recall speaking to any judges.
Q Was it the truth that you had beaten Jack Graham?
[fol. 57] A Was it the truth?
Q Was it the truth when you admitted that you beat Jack Graham?
A Yes.
Q Was it the truth?

A Yes.

Q So you got beaten by the police for what?

A They wanted me to talk, I don't know what they were saying, I don't remember. All I know is I got a beating that was it.

Q Were you the only one that got a beating?

A No, I believe Ralph got a beating too.

Q Did you see him get beat?

A No, I didn't see him get beat.

Q Did you tell any judge at any time?

A I don't recall telling any judge.

Q Never?

A No.

Q Did you ask your lawyer to tell the judge that you got beaten?

A I told my lawyer. I don't recall him telling me that he did tell the judge.

[fol. 58] Q Did you tell your last attorney, Mr. Legham, (phonetic spelling) that you did get beaten up by the police?

A Yes.

Q You did tell him?

A Yeah.

Q When?

A I don't recall when. When I got him as an attorney.

Q What did Mr. Legham say?

A I don't remember.

Q Did he tell you not to worry about it, it doesn't mean anything?

A I don't remember if he said it.

Q Now, as I recall your testimony, Mr. LaBello you said that when you got to Blake Avenue at the housing project you remained in the automobile?

A Yeah, for a while.

Q For a while?

A Yes.

Q Did you get out of the car before Graham drove up in his car? Did you get out of the car before he drove up?

[fol. 59] A Yes. As he drove in the parking lot I got out.

Q Referring to statement 19050, page 9, you were asked this question: "What happened after that?" Your answer, "He dropped us off, I don't know the name of the street." "Blake Avenue?" "Yes." "Then what happened?" Your answer, "He went away and he said, "I'll be back to point the guy out." So, we were standing across the street from the parking lot and he walked back and he pointed and we went across the street to the parking lot and that's when I hit the guy." Now, Mr. LaBello, which was the truth, what you said on the night of March 19th at the police station or what you told this grand jury here and now?

A I'm telling you now I told you I was fogged up when I gave that statement, a bit.

Q Why?

A I was fogged up.

Q How?

A I was all punched up and hit with a hose and all.

Q You got hit with a hose?

A Yes.

Q Where?

A All over.

Q In the head?

[fol. 60] A Yes.

Q In the face?

A No, the face no.

Q No marks?

A I told you I had one mark along my neck. That was it and on my back I think there was one.

Q That's all?

A That's all.

Q You were fogged up?

A Yes.

Q You were out on bail from April 1964 until January of 1965, is that correct?

A Was it April I was out on bail or was it March?

Q Well, your bond here is dated March 20th and then you said that—

A The bail was raised.

Q Raised to $5000?

A $2000.

Q But anyhow you weren't in jail, but for a couple of days, is that correct?

A Well, I was overnight in the police station.

Q So let's give you the benefit of the doubt we will [fol. 61] say from April 1, 1964 until the date that you were sentenced by Judge Barshay and that was when?

A January 11th.

Q January 11, 1965, you were out in the street; is that correct?

A Yes.

Q Did you go back to that cafeteria on Canal Street?

A Yes, sure.

Q Were you looking for Tony?

A Yes.

Q Did you ever find Tony?

A No.

Q Never found him?

A No.

Q Did you ask for him?

A Who was I going to ask?

Q I don't know, I asked you the question.

A No.

Q You never asked for anybody?

A No.

Q Never saw him?

[fol. 62] A No.

Q Never get paid for your job?

A No.

Q To this day you don't know who this Tony is?

A No, I don't know.

Q You don't know?

A No.

MR. PANZORELLA: Thank you that is all.

(WITNESS EXCUSED)

[fol. 63] RALPH PICCIRILLO, residing at Sing Sing Prison, was duly sworn as a witness and testified as follows:

BY MR. PANZORELLA:

Q Mr. Piccirillo, this grand jury is investigating the assault on Jack Graham and any conspiracies in connec-

tion therewith. You have been called as a witness before this grand jury, you were sworn, which means that under the law you cannot be prosecuted for whatever testimony you give in answer to any questions put to you. You have already been convicted by your own plea of guilty in the crime of assault on Jack Graham and you cannot be prosecuted anymore for that. I am going to do one thing. I am going to ask this grand jury to vote on the question of giving you immunity and under Penal Law Section 2447 for the testimony that you will give in this grand jury and that means anything that I ask you and any answers that you give in answer to my questions if it connects you with the crime you cannot be prosecuted for it. That's immunity, do you understand that?

A Yes.

Q Now, if you would step out of the room, the grand [fol. 64] jury will vote on the question of whether to give you immunity or not.

(Whereupon the witness, Ralph Piccirillo, Mr. Panzorella, and the stenographer left the room.)

(Whereupon the witness, Ralph Piccirillo, resumed the stand and testified as follows:

MR. PANZORELLA: Mr. Forman, has the grand jury taken a vote on the granting of immunity to this witness?

THE FORMAN: We have.

MR. PANZORELLA: What was your vote?

THE FORMAN: We have voted to grant this man immunity.

BY MR. PANZORELLA:

Q Now Mr. Piccirillo, you heard the forman of the grand jury?

A Yes.

Q You heard that the grand jury has voted to grant you immunity under the law of Section 2447 and again I repeat that means that any testimony you give here [fol. 65] if it connects you with the crime you cannot be prosecuted for it?

A Yes.

Q Now, you said you wanted to make a statement, make your statement.

A I just want you to know I'll answer the questions. I'd just like to speak to my lawyer.

Q Under these circumstances you are not a defendant, you are a witness, you have been given immunity. That means you cannot be prosecuted. Your rights are fully protected and there is no reason for your conferring with your attorney, do you understand that?

A Yes.

Q Now, I'll put the questions to you. Did you on September 9, 1964, in the Criminal Term Part 5 of the Supreme Court of the County of Kings before Mr. Justice Barshay take a plea of guilty to attempted assault in the second degree, an assault on Jack Graham?

A Yes.

Q Were you sentenced on January 11, 1965, by Judge Barshay to one year and three months to two years and six months in Sing Sing Prison?

[fol. 66] A Yes.

Q Now, at the time of your taking the plea, the court asked you or told you and I'll read it from the minutes:

"The Court: Is it true that you of your own free will wish to withdraw your plea of not guilty to the indictment charging you with assault in the second degree and of your own free will and with full understanding of what you are doing wish to plead guilty to the felony of attempted assault in the second degree, unarmed?"

And your answer was:

"Defendant Piccirillo: Yes, sir."

"The Court; Are you guilty?"

"Defendant Piccirillo: Yes, sir."

"The Court: You heard LaBello just admit his guilt. He said you and he assaulted Jack Graham and inflicted severe injury upon him. Did he tell the truth about himself and about you?"

"Defendant Piccirullo: "Yes, sir."

That was the truth, wasn't it?

A Yes.

Q You admit that you assaulted Jack Graham?

[fol. 67] A Yes.

Q Now, so that we don't misunderstand, I show you these two photographs and ask you whether you recognize the man in the photographs?

A Yes.

Q Is that Jack Graham that we have been talking about?

A Yes.

Q Is he the Jack Graham to whom you admitted assaulting?

A Yes, sir.

MR. PANZORELLA: I offer these two pictures in evidence as People's Exhibit 1, this date.

(Whereupon the two pictures were marked as People's Exhibit 1, today's date.)

Q Let's go back to March 19, 1964, do you remember that date?

A I remember the date.

Q Well, do you remember the date that Jack Graham was assaulted by you?

[fol. 68] A Yes.

Q That was March 19, 1964?

A Yes.

Q. Now, tell us please, tell the grand jury all of the facts leading up to the assault on Jack Graham. Tell us the entire story on it, please.

A Me and this Mr. LaBello were in a luncheonette on Canal Street, the Holland Cafeteria. This fellow approached us and he asked us if we wanted to make $50. So all we had to do was hit this fellow in the leg. That's all. We told him yes. He put us in a car and he took us over there and he pointed this fellow out when he pulled up with the car and we went and we struck him on the legs. When we went to go back to this fellow's car he took off and left us there and we ran the other way and we were caught by the cops.

Q That's the whole thing?

A Yes.

Q Now, how long have you known Anthony LaBello?

A A long time.

Q About how long?
A Five, six years, something like that. I don't re-
[fol. 69] member. We used to go to the same school together.
Q Which school?
A P.S. 130.
Q Where?
A In Manhattan.
Q Where were you living in and around March of 1964 before you were arrested?
A 2327 82nd Street, Brooklyn.
Q What is the address 1308 Manhattan Avenue, Union City, New Jersey?
A That's an address I used for my Jersey license to work.
Q Who lives there?
A A friend of mine.
Q What is his name?
A What?
Q What is his name?
A Mr. D'Amato (phonetic spelling).
Q What kind of work does Mr. D'Amato do?
A Drives a truck.
Q For who?
A Service trucking.
Q Did you work for service trucking?
[fol. 70] A Yes.
Q How long?
A Since 1959.
Q Does LaBello drive a truck for Service Trucking?
A Yes.
Q But you have known each other for a long time?
A Yes.
Q You live close by each other don't you here in Brooklyn?
A Pretty close.
Q Did you pal out together?
A Yes.
Q Now, on the morning of March 19, 1964, how did you get to this cafeteria?

A I don't remember if it was by train or my uncle used to pick me up in the morning, drive me to work.

Q And LaBello too?

A No, no—yeah, some mornings I used to pick him up.

Q But you don't recall about this morning of March 19th?

A Yes, I told you just what happened.

[fol. 71] Q How did you get there?

A How I got to the cafeteria?

Q Yes.

A I don't remember.

Q You don't remember?

A No, I don't know if it was by train. Some mornings my uncle did pick me up, some mornings he didn't pick me up.

Q Did you use LaBello's car by chance?

A No.

Q He had a car?

A I don't know if he had a car.

Q How about the Desoto?

A I don't know if he had it then or not.

Q What time did you get to the cafeteria?

A About 6:30.

Q What was the reason of going to the cafeteria?

A That's where we shape up in the morning for the job.

Q Shape up for what?

A Rufello Trucking (phonetic spelling).

Q You had the shop steward there?

A Yes.

Q What is his name?

[fol. 72] A Charles Bannanti.

Q Did you give him your name that morning.

A You mean to go to work?

Q Yes.

A He don't take you names in the morning. If we don't work, we don't work.

Q How do you get to work?

A If there's enough trucks in he dispatches us from that luncheonette. Either he takes us with his car if he's going that way or we take a bus or train to meet the truck.

Q How many fellows shaped up that morning, about?
A Maybe fifteen, twenty. Between two jobs there I couldn't tell you.
Q I see. Did you get the employment that morning?
A No.
Q Then what happened?
A We hanged around there for a while until everybody left. Then this fellow approached us.
Q Who was it?
A I don't know his name.
[fol. 73] Q You don't know his name?
A No.
Q Never heard his name?
A He said something about his name being Tony when he drove us to the car but I couldn't say whether it was or not.
Q What did Tony look like?
A About 5'7", like that. A little husky, black hair, wavy hair.
Q Wavy hair?
A Yeah.
Q What kind of features did he have?
A Round features, round face.
Q Light skin?
A Yeah, light skin.
Q Did he need a shave?
A I don't remember.
Q Did he have a beard?
A He had no beard.
Q A mustache?
A No.
Q How was he dressed?
[fol. 74] A He had a black suit on and a black raincoat.
Q Was he hairy or not?
A What do you mean "hairy"? You mean on his head?
Q Yes.
A He had hair.
Q How about on his hands?
A I don't remember if he had hair on his hands.

Q Did he have clean hands or dirty hands or what?
A He had clean hands. He had a suit on.
Q Did you look at his hands?
A No.
Q How do you know he had clean hands?
A I guess if you are wearing a suit and a coat you are not working on a truck as I do you should have clean hands.
Q Was Tony a truck driver?
A I don't know.
Q Was he shaping up?
A Not with us.
Q How did he come to come to you?
A He just walked over to us.
[fol. 75] Q Where were you sitting?
A In the front table.
Q Who was with you?
A Me and Tony.
Q That's all?
A That's all.
Q And this fellow walked over to you?
A Yes.
Q Did he sit down?
A Yes.
Q What did he say?
A He said if we wanted to make a few dollars. So we asked him how. He said all you have to do is hit this fellow in the leg. I'll point him out to you, don't hurt him and come back and I'll give you $50.
Q Come back where?
A To his car which happened he ran away on us.
Q How long did you stay in the cafeteria?
A With him?
Q Yes.
A About a half hour, something like that. I don't remember to be exact.
[fol. 76] Q What did he tell you about the $50?
A He said as soon as we got back in the car he would pay us.
Q When did he say that he would give you the $50 for this hit?

A In the cafeteria.
Q In the cafeteria?
A Yes.
Q $50 for the whole job for both of you to share?
A I think it was $50 a piece.
Q You think?
A I'm not sure, I think it was $50 a piece.
Q What were you supposed to hit the fellow with?
A He gave us two irons in the car.
Q Did he give them to you in the cafeteria?
A No, when we got in the car.
Q Did you discuss it in the cafeteria?
A Yeah, we discussed it a little bit.
Q What did he say to you?
A He told us all we had to do was hit this fellow in the leg, that's all. Don't hurt him, just him him in the leg and come back to the car.
[fol. 77] Q Did you ask him with what?
A Yes. He said I'll give you something in the car.
Q Did you ask him what?
A Yes, he says a pipe.
Q A pipe?
A Yes.
Q Was it a pipe?
A It was sort of a tire iron.
Q What else?
A Another iron. I don't know what it was for.
Q Which one did you have?
A I had the big one.
Q How was it shaped?
A About that long (indicating).
Q How long?
A About that long (indicating) with two iron things on the end. I don't know what they were for.
Q It was fatter on the end than in the center?
A Yes.
Q You are a truck driver?
A Yes.
Q Is that a piece of iron that comes off from an [fol. 78] automobile or truck?
A Not off an automobile, maybe off a truck. I wouldn't know.

Q What part?
A It looked like something to change the tire.
Q The one that you had?
A Yes, but I'm not too sure.
Q Was your flat?
A No, it was sort of round.
Q Do you think you could change a tire with that iron that you had?
A If the nuts would fit it I guess.
Q Did you ever hear of a tierod?
A A tierod?
Q A tierod.
A It sounds like something from a car.
Q You are not a mechanic?
A No.
Q You never did any mechanical work on a car?
A Well, maybe put oil in the car or something like that but that's all.
Q Do you know anything about the steering mecha-
[fol. 79] nism of a car?
A No, I don't.
Q So you never heard the expression, "tierod"?
A I think I heard it. I think it comes from a car. I'm not too sure.
Q How did you get from New York to Brooklyn?
A This fellow drove us.
Q What kind of car did he have?
A His car was black. It was a Ford, I don't remember the year.
Q Was it a convertible?
A No, hard top.
Q How many doors?
A Four doors.
Q A four door car?
A Yes.
Q Where did you sit?
A In the front.
Q Where did LaBello sit?
A In the back.
Q Where were the irons?
A He had them under the front of the seat.

[fol. 80] Q What streets did you use to get to Brooklyn?

A I think we were on the Belt Parkway.

Q Which?

A On the Belt Parkway. Then he got off on one of the exits. I don't remember which streets he went through. I'm not too familiar with that section of Brooklyn.

Q Did you get to a project?

A Yes.

Q Do you know what project it was?

A No, I don't.

Q Did you park in the parking lot or in the street?

A In the street.

Q Did you get out of the car?

A Not right away.

Q How long did you stay in the car?

A Oh, about a half hour I guess, something like that. He was waiting for the fellow to come.

Q Did he tell you who the fellow was?

A When the fellow came with the car he told me.

Q How did he tell you?

A He said that fellow there with the white car, he's [fol. 81] parking it now.

Q Did you see into the parking lot?

A Yes.

Q Then what happened?

A Then he got out of the car and I walked over and hit him on the leg.

Q How many times?

A Once or twice.

Q Did you hit him on the head?

A No.

Q Who hit him on the head?

A I don't think none of us hit him on the head. I think he fell and hit his head. I could have hit his head but I don't think I did.

Q Was the man facing you or did he have his back to you?

A He was facing me.

Q On which side of you was LaBello?

A LaBello was in back of me.
Q LaBello hit him?
A I don't think so.
Q He wasn't to either one of your sides?
[fol. 82] A I couldn't tell you which side he was on. I know he was in back of me because I got out of the car first.
Q Did you run into the lot or walk?
A Walk in.
Q LaBello was behind you all the time or alongside of you?
A I don't know if he was behind me or alongside of me.
Q How did you carry your iron?
A In my hands.
Q Exposed?
A Yes.
Q Not wrapped up?
A It wasn't wrapped in nothing, I don't think so.
Q Did LaBello have an iron?
A Yes.
Q What kind?
A A one foot tire iron, one for a car, a narrow skinny one.
Q Where did the bat come into the picture?
A The bat?
Q Bat.
[fol. 83] A There was no bat.
Q No bat?
A No bat.
Q Do you remember being arrested?
A Yes.
Q Were you taken to the 73rd Detective Squad?
A I don't know if it was the 73rd or not.
Q Did an Assistant District Attorney come there with a stenographer with a machine like this?
A Yes.
Q Questions were asked of you?
A Yes.
Q You gave answers?
A Yes.

Q Referring to statement 19050 on page 2: "Question —what did he say to you?" Answer: "He told us if we would hit a guy with a bat he would give us some money."

A I didn't mean to say bat. They had the irons and they showed them to the District Attorney.

Q Why did you take this kind of contract?

A I needed the money. I'm a degenerate horse player.

[fol. 84] Q When was the last time you worked?

A That week I worked.

Q How much did you make?

A I only worked a few days.

Q How much a day do you make?

A $25.

Q Did you ever take a contract to make a hit like this before?

A No, sir.

Q Out of the clear sky a man walked over to you, a man you didn't know and asked you to make a hit?

A Yes.

Q You take it?

A I don't know a hit, I don't understand that.

Q You don't know that?

A No.

Q All right sir, referring again—

A I mean you're talking about hitting him?

Q What do you mean by "hit?"

A I don't know, I mean hitting him. I admit that I hit him. If I knew who this other man was in the car, if I knew him, and I knew his name I would tell you right now.

[fol. 85] Q You would?

A That's right, because I got three kids on the street and a very sick wife and right now they need me very much.

Q All you know of this man is that his name is Tony?

A Yes.

Q Is this the first time you ever saw him?

A I think so, yes.

Q You were out on bail, weren't you?

A Yes.

Q All the way up to the time of your sentence you were out on bail?

A Yes.

Q So that's approximately from the end of March, 1964 to January of 1965?

A Yes.

Q Did you ever go back to the restaurant, the cafeteria?

A Yes, I have to shape up there every morning.

Q Did you look for Tony?

A I looked around for him.

Q Did you ask anybody about Tony?

[fol. 86] A I asked the fellow in the back, the owner of the place.

Q What is his name?

A I don't know his name, the Spanish fellow. He's always there every day. I asked him. He said he doesn't know the guy.

Q Did you see a license plate on the car?

A I didn't notice the number. It must have had a plate on it but I didn't notice the number.

Q You don't know whether it's a Jersey car or a New York car?

A It's a New York car.

Q How are you sure of that?

A I seen the plate but I don't know the number.

Q No numbers that you remember?

A No.

Q No letters?

A No.

Q Did you talk very much while you were driving over to Brooklyn?

A No, not too much.

Q Did you ask Tony what did this fellow do that [fol. 87] we are going to hit, that you want us to hit?

A I asked him, he didn't want to answer me. He said, "If you want to do it then do it, if not, then get out of the car." So I said, "I need the money." I said, "I aint going to hurt this fellow, I'll hit him in the leg the way you told me and that's all." He said, "That's all I want you to do."

Q The shop steward, what was his name?
A Bannanti.
Q What is his first name?
A Charles.
Q Charles Bannanti?
A Yes.
Q Where does he come from?
A Brooklyn.
Q What part of Brooklyn?
A 56th Street I think, East 56th Street. He is a relation of mine.
Q You belong to the union?
A Yes.
Q What union?
A 707 and 560.
Q Of what?
[fol. 88] A Teamsters.
Q You are sure Bannanti didn't tell you to make this hit?
A No, sir.
Q Do you know anybody in housing?
A Me?
Q Yes.
A No, sir.
Q Did you know that Jack Graham was a contractor in housing?
A Not at the time I hit him. When I was going to court and everything then I found out who he was.
Q Any union men talk to you about this?
A No.
Q At any time?
A. No. Nobody. I don't know no union men anyway.
Q Do you remember what you said to the Assistant District Attorney in the police station?
A No, sir.
Q Why not?
A I don't remember—you want me to answer that truthful?
[fol. 89] Q Yes.
A Because I was dazed from all the shots in the head I got from a lead pipe.

Q A lead pipe?
A Yes.
Q Did you have any cut on your head?
A No, not on my head, on my back. I had them all over my body.
Q Who hit you?
A Every cop in the precinct hit me.
Q How many about?
A I would say about six or seven of them.
Q Did you get injuries?
A Not now. I had plenty.
Q Did you have injuries?
A Backaches and things like that.
Q To the head you are talking about?
A I got hit here, around here in my throat.
Q Did you tell the Assistant District Attorney that you got beaten?
A Yes, I did.
Q What did he say?
A He didn't say nothing. I don't even think it went [fol. 90] down on the thing.
Q You were held in the precinct overnight?
A Yes.
Q You were taken before a desk officer weren't you?
A I don't remember. I remember I was talking to the D.A. then they put me back in the room. The next thing I remember I was down in the cell.
Q The precinct?
A Yes.
Q The next morning you were taken to court, weren't you?
A Yes.
Q You were put in the cell behind the court?
A Yes.
Q You remember being asked whether you had any complaints?
A No, I was never asked.
Q Never asked?
A No.
Q Did you tell them that you were beaten?
A No.

[fol. 91] Q Were you bleeding?

A No. I had a lot of black and blue marks.

Q Did you show them to the Correction Department?

A No, sir. That's what I did wrong. I should have shown them to the Correction Department. I didn't though because I never went through this before.

Q Did you appear before the judge?

A Yes, sir.

Q Did you tell the judge you were beaten?

A No.

Q Why not?

A I didn't tell him.

Q Did you have a lawyer?

A No. When I went back the next week I didn't have a lawyer. I went to get legal aid, a legal aid lawyer. I went in front of the judge. He jacked the bail up and he threw me back in the cell before I could say anything.

Q Did you explain to anybody about your beating?

A No.

Q Did you tell your mother?

A No, I told my wife.

Q Your wife?

[fol. 92] A Yes.

Q The same day?

A That night when I got home. She seen all the marks on my back.

Q What did she do about it?

A Nothing. What could you do about it, you tell me?

Q I am asking you.

A You can't do nothing about it.

Q You were before a judge?

A Yes, sir.

Q You didn't tell the judge?

A I didn't get a chance to open my mouth.

Q You were asked in the cells behind the court by the men from the Correction Department?

A They asked me?

Q Yes.

A I don't remember.

Q You conveniently don't remember those things?
A I don't remember.
Q You told your wife but here you were standing in front of a judge and you didn't tell him?
A I didn't get a chance to tell the judge.
[fol. 93] Q Were you asked how you plead?
A I don't remember that. You should have the minutes there. I don't remember. I know I went in front of the judge. They read something off and he set bail $1000.
Q Oh no, he didn't say that. He said, "How do you plead? Guilty or not guilty?"
A That I don't remember.
Q He also asked you if you had a lawyer, do you want time to get a lawyer.
A I think he told me that, yes.
Q You remember that?
A Yes.
Q So you answered the judge?
A Yes, I think so.
Q You remember better now, don't you since I suggested it to you?
A Yes.
Q Didn't you talk to the judge?
A He asked me if I had a lawyer—no, I'm not sure. You have the papers there, why don't you read from the papers to me.
Q You were talking to the judge?
[fol. 94] A I don't know if I talked to the judge or Mr. LaBello talked to the judge.
Q Mr. LaBello was there? I am speaking about the first time.
A The first time we went in front of the judge we were arraigned or whatever you call it. I was put on $1000 bail.
Q Before you jump into the $1000 bail, you appeared before the judge, the clerk, the uniformed man, the bridge man read the complaint, is that right?
A Yes.
Q There was a police officer there?
A Yes.

Q Alongside of you?
A Yes.
Q He swore to the complaint, didn't he?
A Yes.
Q You saw him put his hand up and he swore to the complaint?
A I don't remember putting his hand up but he must have.
Q Then you were asked how do you plead, guilty or [fol. 95] not guilty?
A I don't remember.
Q These things you don't remember and the other things you do remember? He asked you did you have a lawyer?
A I don't remember. I know I didn't have no lawyer with me.
Q There was no lawyer there?
A No lawyer.
Q No lawyer was assigned to you?
A No.
Q Was your mother there?
A My mother was there.
Q Were you asked do you want time to get a lawyer?
A I don't remember.
Q The only thing you remembers is the $1000 bail?
A That's right.
Q And your case was put over for how long?
A I think a week.
Q Then you went back?
A Yes.
[fol. 96] Q Did you have a lawyer?
A No.
Q The second time you went back you didn't have a lawyer?
A No, I didn't have a lawyer.
Q Then what happened?
A I was just about to ask the judge for legal aid when he jacked up the bail to $2000 and they took me and put me in the cell. Five minutes later I was back in Old Queens.

Q When you went into Old Queens, were you examined?

A That night?

Q Yes?

A Maybe I was examined. I'm not too sure. They usually do.

Q When you went into the receiving pen you remember that?

A Yes.

Q How were you transported?

A By van.

Q When you went into the receiving pen, what happened in there?

[fol. 97] A They searched us.

Q Only searched?

A No, I remember you walk over to a doctor and he asked you does this hurt you, have you had that, have you had this.

Q What did you tell him?

A I told him no. He said put your clothes back on.

Q You were stripped?

A Yes.

Q Completely stripped?

A Yes.

Q Did you have any bruises?

A Yes, black and blue marks.

Q What did you tell the doctor about the black and blue marks?

A He didn't ask about that.

Q He didn't ask?

A No.

Q Never asked you a question about black and blue marks?

A No.

Q Did you volunteer it?

[fol. 98] A No.

Q You don't know who the doctor was?

A No, I don't know his name.

Q Then what happened? You put your clothes on?

A Yes.

Q Were you asked the general question, "Have you any complaints?"

A I don't think so. I had no complaints anyway. What's the use of complaining. Anyway I deserved the beating I got for hurting this man.

Q Now, you have a lawyer is that right?

A Yes.

Q What is his name?

A First the lawyer I had was Carl D'Angelo.

Q Did you tell Carl D'Angelo that you had been beaten?

A Yes, I did.

Q What did he say?

A There was no more marks then.

Q The marks disappeared?

A Yes.

Q Did you tell Mr. Legham about it?

[fol. 99] A Yes.

Q What did he say?

A Nothing.

Q Nothing at all?

A There was no marks. He said you should have said it the first day you got out of jail.

Q Did you tell him the confession was beaten out of you?

A Yes.

Q You did?

A Yes.

Q What did he say about that?

A He didn't say nothing.

Q Did he tell you forget it?

A He didn't say forget it. There is nothing you could do. What could you do?

Q He told you that there is nothing he could do?

A He didn't say nothing that he could do. I don't know if he did a thing or he went to see anybody. That I don't know.

Q Did you ask him?

[fol. 100] A No, I didn't.

Q Then you appeared before Judge Barshay and you took the plea of guilty?

A Yes.
Q Did you tell the judge you had been beat?
A No.
Q No?
A No.
Q Were you asked?
A No.
Q That's all you know about this case?
A Yes, sir.
Q Do you know an attorney by the name of Waltser (phonetic spelling), John Waltser?
A Might. They sent a couple of guys to appear with me a few times. I don't know their names. D'Angelo sent somebody to appeal for us too.
Q Everything you have told this grand jury is the truth?
A Yes, sir.
MR. PANZORELLA: Thank you. That is all.

(WITNESS EXCUSED)

(BILL FOUND)

IN THE SUPREME COURT OF THE
STATE OF NEW YORK, KINGS COUNTY

1053/65

PEOPLE OF THE STATE OF NEW YORK, PLAINTIFFS

-against-

ANTHONY LA BELLO, RALPH PICIRIELO, DEFENDANTS

MINUTES OF MARCH 22, 1965

Appearances:

AARON E. KOOTA, ESQ.
District Attorney
By:
EDWARD A. PANZERELLA, ESQ.
Assistant District Attorney

EDWARD MINTZER
Grand Jury Reporter

PTL. WILLIAM A. SEWELL, Shield 2632 of the Housing Authority Police, was duly sworn as a witness and testified as follows:

BY MR. PANZERELLA:

Q Ptl. Sewell, are you a police officer attached to the housing police of the City of New York?
A I am.
Q On March 19, 1964, were you attached to the housing police force of the City of New York?
A I was.
Q What was your assignment on that day?
A I was assigned to Brownsville headquarters located at 528 Stone Avenue, Brooklyn, New York.
Q Is that a housing project there?
A It is.
Q What is the name of the project?
A Brownsville Headquarters.

Q Now, did an incident occur on that day which caused you to give chase and place under arrest one Anthony La Bello and one Ralph Picirillo?

A Yes.

Q Did you apprehend the two defendants?

A I did.

Q You arrested them?

A Yes.

Q Did you have a conversation with them?

A Yes, sir.

Q What was the substance of the conversation at the time of the arrest?

A Anthony La Bello and Ralph Picirillo stated that they were hired to, well, their words were, "To do in Mr. Jack Graham," the person who was assaulted.

Q Did you recover any weapons from the defendants La Bello and Picirillo?

A Yes, sir.

Q Do you have the weapons with you?

A Yes, sir.

Q Now officer, can you tell us which weapon was in the possession of which defendant or by their own admissions?

A Yes, sir. The larger weapon was in the possession of Picirillo, the smaller weapon was in the possession of La Bello.

Q Now, were these defendants indicted by a Grand Jury of Kings County?

A Yes, sir.

Q Now, while the matter was pending after the arrest, did you have any further conversations with the defendants or either of them?

A Yes, sir.

Q Will you tell this grand jury when and where you had the conversations with these defendants and what subsequently aspired?

A May I refer to my memo book?

Q Yes.

A On March 20th I appeared in Brooklyn Criminal Court, Part 1B. The defendants were placed on $1000 bail. While in court the defendant Picirillo offered me

$1000 or $1500 to change my testimony and to get rid of one of the weapons and also give them the name of the witnesses who possibly saw the incident occur. They asked me to meet with them and they would tell me what they wanted me to say and how to get rid of the evidence.

Q You mention the name of Picirillo, was Anthony La Bello present at that time?

A Yes; he was.

Q Any other person present at that time, other than you, Picirillo and La Bello?

A No, sir.

Q Did La Bello say anything to you at that time?

A Yes, sir. He said that $1500 was a lot of money and I could possibly use the money for some good. That I wouldn't be hurting anybody by doing this little favor for him, that they didn't want to go to jail.

Q Now, did you answer La Bello and Picirillo at that time?

A Yes, I did.

Q What did you say to them?

A They asked me to meet with them that night. They told me where, I told them I would meet with them.

Q Where did they ask you to meet?

A In Bickford's Restaurant. That's on Fulton Street, that's right across the street from the Fox Theatre.

Q That's in the County of Kings?

A Yes.

Q Did you report this to your superiors?

A Yes, I did. I called my commander.

Q Who did you report it to?

A Captain Ladee (phonetic spelling), the captain in charge of the plainclothes division in the housing authority police.

Q Who else did you report it to?

A I went directly to the Municipal Building, I spoke to Mr. Panzerella. I advised him of the offer I had been made. I told them they had wanted me to meet up with them.

Q As a result of these reports, did some arrangement take place?

A Yes, sir.

Q What took place?

A I was advised to meet with the two defendants at the specific time specified. I was given equipment, I think it's called a miniphone. I also had two detectives from my command with me. I had two detectives from the District Attorney's Office with me. I also had a gentleman from the C.I.B. Division, Detective McBride with me also when I met with them in Bickford's.

Q What time did you get to Bickford's Restaurant on Fulton Street in Brooklyn?

A I arrived at 8:30 p.m.

Q Were the defendants in the restaurant when you arrived?

A No, sir.

Q Did you seat yourself somewhere in the restaurant?

A Yes, I did.

Q Did you wait for the defendants?

A Yes.

Q Did the defendants arrive?

A Yes. After approximately ten, say ten to fifteen minutes—there were several people in Bickford's who watched me, they came by. In fact, one person sat at the table, no one ever said anything. The two gentlemen sitting at the table directly in front of me, they stood up, they walked outside. Two other people came in, they sat next to me, they also got up, they walked out. A young lady came in and sat at the table. She stayed approximately two minutes and she got up and she walked outside. After approximately two or three minutes Anthony La Bello and Ralph Picirillo entered Bickford's Restaurant.

Q Did La Bello and Picirillo come to where you were seated?

A Yes.

Q Was anybody else with them?

A No, no one that I could see.

Q Did they seat themselves?

A Yes, they did.

Q Did you have any conversation with the defendants, La Bello and Picirillo?

A Yes. They asked me to first of all change the table from where I was sitting.

Q Did you do so?

A Yes, I did, sir.

Q Then what occurred?

A They stated that the offer they made me this morning of $1000 or $1500 to get rid of the evidence, change your story or your testimony which will be in court, or give us the name of the two witnesses involved and in their words was to be able to get to them with some money.

Q Which one said what to you?

A Picirillo stated that he used the heavy pipe which is the large heavy pipe. He stated he struck Mr. Graham in the head, in the leg, and in the back with the heavy pipe. La Bello stated he hit him on the arm, the back, the shoulder with the lighter pipe. They stated that $1500 would be mine. I had nothing to worry about that—

Q Who said this to you?

A Actually in substance, both were doing the talking.

Q Yes, but tell us what each one said as you best recall.

A Picirillo stated that they had met this particular person in a diner and that he had offered them money to beat Mr. Graham up. He stated that they were driven to Brownsville Projects. Someone, the gentleman who drive them there dropped them off on the corner, someone else pointed Mr. Graham out. They proceeded to the parking lot. When Mr. Graham stepped out of his car they assaulted him and they left.

Q With respect to the offer of money to you, did Picirillo offer you money?

A Yes, sir. Picirillo offered me $1500 to change my testimony to a statement that would be given to me later. They would have someone contact me later, tell me exactly what to say. I was to get rid of one of the pipes.

Q Which one?

A The large pipe and I was assured I would be assured by the person or persons that would contact me that I had nothing to worry about as far as my job was concerned or as far as getting in any type of trouble. They would take care of all these arrangements.

Q What did La Bello say to you?

A He stated the money would be good. They had friends where they could get this particular money from. I'd be very foolish not to take this kind of money because it was a very simple case. My testimony was the most important. If they could get to the witnesses, they could sway them with money. My testimony was the main one that they were interested in. If having me change my story or alter my story and especially get rid of the heavy pipe—

Q Did you do any of the things requested?

A No; I did not.

Q Did you report this conversation together with the miniphone tape to anyone?

A. I did.

Q Who did you report it to?

A I left Bickford's. We returned to the District Attorney's Office in the Municipal Building. I called my command headquarters. I advised them only that I had a conversation with the two defendants. I advised the District Attorney's Office of everything that transpired. The detective from the C.I.B. Division, Detective McBride was also advised of everything that transpired and the miniphone tape was returned to the District Attorney's Office.

Q Did you accept the offer of the money?

A I did not.

Q Was any money paid to you by either La Bello or Picirillo or anybody in their behalf?

A No, sir.

Q Did you get rid of the weapon that was requested that you get rid of?

A No, sir. I have both weapons here in my possession at this particular time.

Q Did you arrange with Picirillo or La Bello to meet again at a subsequent date?

A I was advised to think over their offer, I would be contacted the following week by an official from the Housing Authority who would tell me exactly what to do and how to go about getting rid of the evidence that this particular official, whoever he was, would assure me that nothing would happen to me in the future.

(WITNESS EXCUSED)

IN THE SUPREME COURT OF THE
STATE OF NEW YORK, KINGS COUNTY

No. 1053-65

THE PEOPLE OF THE STATE OF NEW YORK, PLAINTIFFS

against

ANTHONY LA BELLO, RALPH PICIRILLO, DEFENDANTS

INDICTMENT Filed July 14, 1965

The Grand Jury of the County of Kings, by this indictment, accuse the defendants of the crime of BRIBING CERTAIN PUBLIC OFFICERS committed as follows:

The defendants, acting in concert and each aiding and abetting the other, on or about March 20, 1964, in the County of Kings, did offer to give to WILLIAM A. SEWELL, a police officer, and a member of the Housing Authority of the City of New York, the sum of either one thousand dollars or fifteen hundred dollars in United States currency, with intent to influence the said WILLIAM A. SEWELL in his acts, decisions and duties as such police officer in and concerning the arrest and prosecution of the said defendants, ANTHONY LA BELLO and RALPH PICIRILLO, both of whom were arrested and in the custody of the said WILLIAM A. SEWELL on a charge of assault, and to cause the said WILLIAM A. SEWELL to alter and change his testimony to be given upon a hearing of the said charge against the said defendants and further that the said WILLIAM A. SEWELL would dispose of the weapons involved in the assault and alleged to be used by the defendants and further, to furnish to the said defendants the name or names of any and all witnesses against the said defendants concerned with the aforesaid charge of assault.

AARON E. KOOTA
District Attorney

IN THE SUPREME COURT OF THE
STATE OF NEW YORK, KINGS COUNTY

THE PEOPLE OF THE STATE OF NEW YORK

—*vs*—

ANTHONY LABELLO and RALPH PICIRILLO, DEFENDANTS

SIRS: PLEASE TAKE NOTICE, that upon the annexed affidavit of HERBERT S. SIEGAL, Esq., duly sworn to the 26th day of November, 1965, the Indictment herein, and upon all the proceedings heretofore had herein, the undersigned will move this Court at a Term thereof, to be held in Part I, in the Supreme Court, Kings County, at Supreme Court Building, Brooklyn 1, New York, on the 6th day of December, 1965, at 10:00 o'clock in the forenoon of that day, or as soon thereafter as counsel can be heard, for an Order granting the above named defendants permission to inspect the Grand Jury minutes of the testimony upon which the Indictment herein was founded, or in the alternative, that this Honorable Court read the minutes and consider this Motion, as a Motion to dismiss the Indictment, based upon incompetent, illegal and insufficient evidence, and for such other and further relief as to the Court may seem just and proper.

Dated: New York, N. Y. November 26th, 1965.

Yours, etc.,

HERBERT S. SIEGAL,
Attorney for Defendants,
Office & P.O. Address,
165 Broadway,
New York, N. Y. 10006.

To: HON. AARON E. KOOTA,
District Attorney, Kings County,
Municipal Building,
Brooklyn 1, New York

To: CLERK OF THE SUPREME COURT
Supreme Court Building
Brooklyn 1, New York

IN THE SUPREME COURT OF THE
STATE OF NEW YORK, KINGS COUNTY

THE PEOPLE OF THE STATE OF NEW YORK

—*vs*—

ANTHONY LABELLO and RALPH PICIRILLO, DEFENDANTS

STATE OF NEW YORK)
) ss.:
COUNTY OF NEW YORK)

HERBERT S. SIEGAL, Esq., being duly sworn, deposes and says:

That he is the attorney for the defendants above named and makes this affidavit upon information and belief for an Order granting permission to inspect the Grand Jury minutes of the testimony, upon which the Indictment herein is based or in the alternative that this Honorable Court read the minutes and consider this Motion as a Motion to dismiss the Indictment based upon incompetent, illegal and insufficient evidence.

That the defendants were not afforded a Hearing before the Criminal Court, Kings County, inasmuch that the arrest herein was made after the filing of the Indictment and the defendants have made reasonable effort to learn without inspection of the Grand Jury minutes as to what was testified to before the Grand Jury.

That heretofore, the defendants on or about the 14th day of July, 1965, were indicted for the crime of bribing certain Public Officers on or about the 20th day of March, 1965.

It is respectfully contended that the evidence presented to the Grand Jury, upon which the Indictment herein was found must have been illegal, incompetent and insufficient.

The presumtion of innocence prevails as much in the Grand Jury room as elsewhere, and the evidence before that body must be such as to clearly over come that presumtion before an Indictment can be properly found.

That the charges of Bribery contained in the Indictment arose out of a charge of Assault, which occurred on or about the 20th day of March, 1964.

Upon information and belief it appears that both defendants testified before the Grand Jury of Kings County, with respect to the Assault charges and other matters in connection therewith, and that both defendants were granted immunity by the District Attorney of Kings County, and the Grand Jury of Kings County, as to all matters arising out of the alleged Assault.

It therefore, appears that the Grand Jury, Kings County has indicted the defendants above named for a crime arising out of the subject matter for which these defendants were granted immunity, in violation of their Constitutional Rights against self-incrimination.

It therefore, appears that the evidence adduced before the Grand Jury was insufficient as a matter of law, and also, that illegal evidence was adduce before the Grand Jury upon which the Grand Jury filed an Indictment against the defendants herein.

That this Motion is made in good faith in order to enable your deponent to make a Motion to set aside the Indictment in view of the fact that your deponent and the defendants believe that the Grand Jury received other than legal evidence to such an extent and in such a manner as to invalidate the Indictment and that the legal evidence received by the Grand Jury was insufficient to warrant the finding of the Indictments, and this Motion is made in order that the Motion to set aside the Indictment, when made, may not rest, even in part, on surmise, but wholly upon disclosed and ascertained facts.

WHEREFORE, your deponent respectfully prays for an Order granting permission to inspect the Grand Jury minutes for which relief no previous application has been made.

Dated: November 26th, 1965.

/s/ Herbert S. Siegal

I, HERBERT S. SIEGAL, an attorney admitted to practice in the State of New York, am the attorney of Record for the defendants herein, and hereby affirm that the foregoing statement is true, under the penalty of perjury.

Dated: New York, N. Y., November 26th, 1965.

/s/ Herbert S. Siegal

IN THE SUPREME COURT OF THE STATE OF NEW YORK, KINGS COUNTY

(CRIMINAL TERM, PART III)
By MALBIN, J.

Indictment No. 1053/1965

PEOPLE OF THE STATE OF NEW YORK

vs.

ANTHONY LABELLO and RALPH PICIRILLO

MEMORANDUM—December 13, 1965

This is a motion to inspect the Grand Jury minutes upon which the indictment was founded, or, in the alternative to dismiss the indictment upon the ground that incompetent, illegal and insufficient evidence was received by the Grand Jury. The relief sought also included a direction that the testimony of the defendant be furnished to the attorney for the defense (the defendants appeared as witnesses before the Grand Jury).

The indictment was filed on July 14, 1965, charging the defendants with the crime of bribing certain public officers. The court has read the Grand Jury minutes

and is of the opinion that there was sufficient competent legal evidence before the Grand Jury to warrant the finding of the indictment. Among the contentions raised by the defense, that the defendants when they appeared as witnesses before the Grand Jury received full and extensive immunity that encompassed the present indictment, is without merit. The testimony furnished by them could not be construed in the slightest degree that it offered a lead or suspicion that their testimony was related to the allegations set forth in this indictment. It is the view of this court that there has been full compliance with the requirements of Section 251 of the Code of Criminal Procedure.

The motion for an inspection of the Grand Jury minutes and for a dismissal of the indictment is denied. However, as to the request for the testimony given by the defendants to the Grand Jury, the District Attorney is directed to furnish a transcript thereof to the attorney for the above named defendants before the trial. Submit short order form in accordance with the within memo decision and effect proper service thereof.

/s/ David L. Malbin
J. S. C.

IN THE SUPREME COURT OF THE
STATE OF NEW YORK, KINGS COUNTY

CRIMINAL TERM : PART 3

Ind. No. 1053—1965

Bribery

PEOPLE OF THE STATE OF NEW YORK

against

ANTHONY LABELLO, RALPH PICIRILLO, DEFENDANTS

Brooklyn, N. Y.

MINUTES OF DECEMBER 16, 1965

Before:

HON. DAVID L. MALBIN

Justice

Appearances:

BENJAMIN SCHMIER, ESQ.,
Asst. District Attorney
for the People

HERBERT S. SIEGEL, ESQ.,
for the Defendants

MARTIN BARRIS, CSR
Official Court Reporter

[fol. 2] THE COURT: Are you ready to proceed, Mr. District Attorney?

MR. SCHMIER: If your Honor please, the District Attorney moves for trial Indictment No. 1053 of 1965, People of the State of New York against Anthony Labello and Ralph Picirillo.

MR. SIEGEL: The defendants are ready.

THE COURT: So ordered. Advise the defendants, Mr. Clerk.

THE CLERK: Anthony Labello and Ralph Picirillo under Indictment No. 1053 of 1965, pursuant to Section 335-B of the Code of Criminal Procedure, you are in-

formed that if you have previously been convicted of any crime or offense, that fact may be established after your plea of guilty or possible conviction in this matter now before the Court, and you may be subject to different or additional punishment.

You are advised further, pursuant to Section 369 of the Code of Criminal Procedure, that if you desire to challenge the selection of any jurors, you must do so before the particular jurors are sworn.

Both sides are informed, pursuant to Section 373 of the Code of Criminal Procedure, that the people and the defendants each have a right to twenty peremptory challenges in the selection of the jury and two peremptory [fol. 31] challenges for each alternate juror. Furthermore, the defendants must unite and join in the exercise of their peremptory challenges.

(Voir dire examination of prospective jurors.)

(Jury duly selected and sworn.)

(By order of the Court two alternate jurors duly selected and sworn.)

THE COURT: You may proceed with your opening, Mr. Schmier.

(Opening by Mr. Schmier on behalf of the People.)

MR. SCHMIER: Ladies and gentlemen, the trial of a criminal case is divided into separate specific parts by the legislature, according to the rules of the Court. The first part is to pick the jury. Then we have the opening to the jury. Then we have the trial. Then we have summations and the charge, and that is the way it works. Now we are up to that point which we call the opening to the jury.

By opening to the jury, the rules hold that I must tell the jury what witnesses I intend to call and what I intend to prove, so that the jury can better follow when these witnesses are called and be better able to follow the case. I am about to open and tell you the people's case, what we intend to prove. I must caution you that what I tell you is not evidence. It is merely

[fol. 4] what I hope to prove, and the evidence will come from the lips of the witnesses, and it is only when a witness testifies to a fact that that fact is to be considered by the jury.

We will call as our first witness, Patrolman Sewell of the Housing Authority Police. He will tell you that on March 19, 1964, he was assigned to a housing project as a housing patrolman at Blake Ave. and Stone Ave., and that right in front of the housing project is a parking lot. At about 9:55 in the morning, Patrolman Sewell's attention was attracted by screaming, and he heard it coming from the parking lot, and he will testify that he ran towards the parking lot and saw these two men beating with weapons a man by the name of Jack Graham, who at that time was the president of the Westgate Painting Corp.

I won't go into Patrolman Sewell's testimony along these lines, but I will tell you that he will tell you that he apprehended these defendants; he placed them under arrest; he recovered the weapons; and that as part of his duties, he took these defendants for arraignment before a judge the following morning at 120 Schermerhorn St., which is known as the Felony Court, although it has, technically, a different name today.

[fol. 5] The defendants were arraigned before the Judge and the case was adjourned, and they were ordered remanded, and held in $1,000 bail.

MR. SIEGEL: I object to that and move to strike it out. I think it is all immaterial and has nothing to do with this bribery.

THE COURT: Yes, I believe your opening should be confined.

MR. SCHMIER: Now that he took them in the room, that is where the bribery took place.

THE COURT: All right.

MR. SCHMIER: After the Judge fixed the bail and remanded the defendants, Sewell will tell you that he took the two defendants from in front of the Judge, and he marched them back to what is known as the pen where you get the prisoners, and just as they reached the door, the defendant Picirillo, that is the gentleman sitting next

to Mr. Siegel, said in words or in substance—Mr. Sewell will give you what he remembers of the exact words—"Officer, you can make yourself a thousand or fifteen hundred dollars by helping us. Meet us tonight in Bickford's Restaurant at Atlantic and Flatbush Ave.," and that's all that was said there. The defendants were [fol. 6] taken in, except that Sewell said to these men, "Okay. I will meet you there."

Now I am not allowed under the law to tell you of any conversation that Sewell had with other people not in the presence of these defendants.

MR. SIEGEL: I object to that.

THE COURT: If you are not allowed to say it, don't refer to it.

MR. SCHMIER: I am going to say that he spoke to them.

THE COURT: The alleged complainant?

MR. SCHMIER: I can't say what he said, but he spoke to some people.

THE COURT: He spoke to some people.

MR. SCHMIER: Amongst the people he spoke to was Assistant District Attorney Edward Panzarella of Kings County; a Detective Sullivan was called, and Mr. Sewell will testify that they put upon him under his jacket a miniphone, which will be explained to the jury at length by one of our electronic experts, who will be called to the stand and explain to the jury what a miniphone is, and Mr. Sewell was instructed how to work it, and when he is ready to talk to the defendants, that he should—

MR. SIEGEL: Objected to.

[fol. 7] THE COURT: Overruled.

MR. SCHMIER: That he should start a certain gadget which will operate it, and Mr. Sewell went to Bickford's Restaurant to meet these two defendants and he was accompanied, although not with him; three other detectives from the district attorney's office parked themselves outside and inside of Bickford's Restaurant, and the one inside was pretending to be a customer, and the other two stood outside looking through the window, and we will show you that scene and we will show you also the spot in the restaurant where the defendants—Sewell

came into the restaurant; he waited a few minutes and then Picirillo and Labello came in. As Sewell sat down, he will tell you, he started the gadget operating. He will tell you that he spoke to the defendants, and that they offered him $1,000 to change his testimony, and that their lawyer would tell him what to say in court.

MR. SIEGEL: Just a moment, if your Honor please, so that the jury does not misunderstand; I was not their lawyer at that time.

MR. SCHMIER: That is true.

THE COURT: I am sure he meant no reflection on your integrity.

[fol. 8] MR. SCHMIER: Not even remotely, Judge. But the conversation will be miniphone recording, which Sewell took, and that will be part of the People's evidence, and the jury will hear, played back, the conversation between Sewell, Labello and Picirillo, and the jury will also be furnished with a transcript of the conversation, and you will hear played back that they offered Sewell $1,000 to change his testimony and to get rid of one of the weapons, and they said to him, "Do you think we can do anything with the witnesses?" There will be two civilian witnesses to the assault, and their names had been taken by Sewell, and in the conversation they said to him, "Can you give us the names of those witnesses," and Sewell, pretending to go along with them, you will hear him say to them, "What do you want to do with the witnesses?" They said, "Do you think we can reach them with a couple of hundred dollars each," and I won't repeat the entire conversation, but Sewell went along and drew them out, and there was talk about what had happened in the parking lot, and various other things which are not important right at this moment, but the entire conversation between Sewell and these two men will be shown and that in the Felony Court, the so-called Felony Court, they told him he can make $1,000 [fol. 9] or $1,500, and we will show you that they repeated the offer in the restaurant, which is right on the miniphone in their voices.

We will also, to complete our case, bring you the detectives who were there and saw Picirillo and Labello

meet with Sewell and talk with Sewell. We will get the detective who put the miniphone on Sewell and he will testify as to how he put it on. He will testify that he was there when Sewell came back, that he took it off, that he immediately played the recording, and that this is what he heard, and what you are hearing is the same recording, wire recording, that was on there at the time, and with all of those facts, we are going to ask you to find a conviction for bribery.

MR. SIEGEL: If your Honor please, pursuant to the provisions of the code, the defendants waive their opening.

THE COURT: Proceed, please. Call your first witness.

MR. SCHMIER: I call Mr. Sewell, your Honor.

PATROLMAN WILLIAM A. SEWELL, Shield 2632 of the Training Unit Housing Authority Police, called as a witness on behalf of the People, having first been duly sworn, testified as follows:

[fol. 10]

DIRECT EXAMINATION BY MR. SCHMIER:

Q Patrolman Sewell, are you a police officer attached to the Housing Police of the City of New York?

A Yes, I am.

Q How long have you been so attached?

A Four years.

Q In a short sentence or two, will you tell us what are the duties of a Housing Police Officer?

A They are the same duties as the N. Y. City Police Department. The only thing is we patrol the Housing Authority projects.

Q On March 19, 1964, were you engaged in your occupation as a police officer for the Housing Authority?

A Yes.

Q Patrolman Sewell, what was your specific assignment at or about 9:55 that morning?

A I was assigned to Brownsville Headquarters. It is located at 528 Stone Ave. That is one of the headquarters for the Housing Authority Police.

Q Did anything unusual occur which attracted your attention as a police officer on March 19, 1964, at or about 9:55 A.M.?

A Yes.

Q Tell the jury what, of an unusual circumstance, occurred.

A At approximately between 9:15 and 9:30, I was standing in the front of our headquarters. I saw a fellow [fol. 11] run across the street, and I saw another gentleman coming across the same street covered with blood. The first fellow, as he came out, he said he just saw two men assault the man who was covered with blood, and he pointed them out to me. I immediately—

Q Who was pointed out to you, if you now know.

A The two defendants.

Q Would you point them out and name them if you can.

A Anthony Labello and Ralph Picirillo.

Q How far were they from you at the time you first saw them?

A They were running through the project, which is across the street, and a little ways into the project.

Q For the purposes of this case, it is sufficient if you tell us now, did there come a time when you apprehended these two defendants?

A Yes.

Q Did there come a time when you placed them under arrest, charged with the assault of the man whom you saw bleeding?

A Yes.

Q Do you now know the name of the man who was bleeding?

A Yes.

Q What was his name?

A Jack Graham.

Q In conjunction with the arrest of these defendants, did you recover any weapon?

A Yes, I did.

[fol. 12] Q What kind of weapons did you recover?

A I recovered a tire iron, which is used to—

MR. SIEGEL: I object to that.

THE COURT: Don't tell us what it is used for. You recovered a tire iron.

THE WITNESS: A tire iron and an 18 inch pipe which is a lug wrench, a large lug wrench.

Q Patrolman Sewell, I show you these two objects, a tire iron and lug wrench, and I ask you if you recognize these two objects.

A Yes.

Q Did you make any identifying marks on these items which would cause you to answer in the affirmative?

A Yes, my initials are carved on there.

Q Now that you have refreshed your recollection, what are these objects as you look at them?

A They are a tire iron and a lug wrench.

Q And are these the two weapons that you recovered in connection with the arrest of these defendants?

A Yes.

MR. SCHMIER: Your Honor, I offer these as People's Exhibit 1 and 2 in evidence.

MR. SIEGEL: I object to it on the ground that it has not been connected with the defendants.

THE COURT: That is so. Explore that further.

[fol. 13] Q Did there come a time—

THE COURT: Just a moment. Take them separately. Are you offering the tire iron?

MR. SCHMIER: Yes, your Honor.

THE COURT: That will be marked People's Exhibit 1 for identification.

(Tire iron marked People's Exhibit 1 for identification.)

Q Only specifically with respect to this tire iron, did there come a time when you showed this tire iron to either one of the two or both of the defendants?

A Yes.

MR. SIEGEL: I object to it.

THE COURT: Overruled.

MR. SIEGEL: May we approach the bench if your Honor please.

THE COURT: Yes. I might at this time, Mr. Foreman and ladies and gentlemen, make this observation. There will be times during the trial, as you have observed, when the attorneys will approach the bench and we will have a discussion, and you can't hear it, and it is done deliberately so that you cannot hear it because we are discussing matters of law which are no concern of yours at this time.

(The following took place at the bench without the [fol. 14] hearing of the jury.)

THE COURT: As to this tire iron, you are about to ask him whether he exhibited this tire iron to the defendant or either one of them?

MR. SCHMIER: Yes your Honor.

THE COURT: To whichever one you attribute physical possession of the alleged particular exhibit.

MR. SCHMIER: Yes your Honor.

THE COURT: What is your objection?

MR. SIEGEL: My objection is that the District Attorney has gone on record as saying that he will not offer any admissions or confessions by the defendant. This is certainly an admission.

MR. SCHMIER: This is part of the previous assault case.

THE COURT: I will sustain the objection. As a matter of fact, all you have to establish as a predicate or as a foundation to the bribery charge is that there is some pending matter in which this officer's opinion or his determination or his actions were attempted to be influenced by this offer for him to withhold the doing of his duty, and you have a right to show that.

Now you have before the jury that there was an assault charge. I will permit you to show that there was [fol. 15] a charge made against them, and I am not indicating the manner of your proof, but it is sufficient as a predicate for this charge, if there was a complaint and these two defendants are identified as being those who were arrested and charged with the complaint, and if the complaint sets forth the fact that these two instruments that you speak of were part of the complaint, I am going

to allow it. I am saying that now. He is absolutely right. You don't have to get the admission to the main crux of the case.

MR. SCHMIER: When we were talking about confession, we were talking about bribery admission.

THE COURT: That is out. Mr. Siegel, I merely made my observation to clarify the record, but of course you are not bound by my way of thinking. You realize that.

MR. SIEGEL: Of course.

(In open court.)

BY MR. SCHMIER:

Q Did there come a time, Patrolman Sewell, that you placed the defendants under arrest?

A Yes.

Q What was the charge under which you arrested them?

A Felonious assault and 1897 of the Penal Law.

Q What was the basis of your charge of 1897 of the Penal Law?

A Tire iron and the lug wrench.

[fol. 16] MR. SIEGEL: I object to that. That is not the basis of the complaint.

THE COURT: First please offer the lug wrench in evidence so that it can be marked People's Exhibit 2 for identification.

MR. SCHMIER: I offer the lug wrench as People's Exhibit 2 for identification.

(Lug wrench marked People's Exhibit 2 for identification.)

THE COURT: I think, Mr. Siegel, the answer to the question propounded to this witness was the basis of the assault complaint and also the 1897. You say that these two exhibits for identification are not the basis of the 1897 charge. Is that the fact? Do you have the original complaint here?

MR. SCHMIER: No, I don't have the original complaint.

THE COURT: If it is a question, we can send for it. Is there any question that it was not incorporated in the complaint in the Criminal Court?

MR. SIEGEL: May I ask a question of the witness?

THE COURT: Surely.

VOIR DIRE EXAMINATION BY MR. SIEGEL:

Q The complaint with respect to the 1897, was that based on what someone else told you?

[fol. 17] A I don't understand you.

Q You say that part of the complaint was felonious assault; is that right?

A Yes.

Q And that was based on what someone told you, is that right? You yourself were not the complainant.

A No.

Q You were not hit.

A No, I was not.

Q So that the assault was based on what someone else told you, are we correct?

A Yes.

Q What about the 1897, was that based on what someone else told you?

A The weapons used, yes. They were used in the assault.

Q But the complaint was based on what someone else told you, is that right? In other words, you didn't charge these defendants or either of them with a violation of Section 1897 merely because they had this weapon in their possession or this instrument in their possession?

A No.

Q In and of itself, it is not a weapon unless it is used.

THE COURT: Now you are going into a matter of law that I don't think he is required to answer.

Q Without anything else before you, would you arrest any person that carries this piece of property?

A No.

Q So that the basis of the complaint with respect to [fol. 18] the 1897 was also on what someone else told you, is that right?

THE COURT: That question is objectionable. I don't want to inject myself. The District Attorney is here to do that.

MR. SIEGEL: May I ask one other question.

Q Did you see these instruments being used by the defendants?

A No.

MR. SIEGEL: I object to it.

MR. SCHMIER: On your ruling of law, it is not the question of the nature of the complaint but merely that a complaint was drawn for 1897. I now have an exact copy of the original complaint in the Felony Court, and I would like your Honor's permission to question Patrolman Sewell on it.

THE COURT: I will exclude that because it contains matter that is prejudicial. However, it am going to overrule your objection, Mr. Siegel, for the reason that even though these are innocuous objects that may be used in commonplace by everyone, he had information which gave him probable cause to believe that these were the objects of some illegal acts, and that makes those instruments illegal, and that will be my ruling.

MR. SIEGEL: Very well. If your Honor please, may I see the complaint?

[fol. 19] THE COURT: Yes.

MR. SIEGEL: If your Honor please, I respectfully except.

THE COURT: Exception noted. I understood you to say that you made out a short affidavit which was based upon information that you received from a person. Is that correct?

THE WITNESS: Yes, Sir.

BY MR. SCHMIER:

Q And also by virtue of the fact that you found these two exhibits that have been marked for identification.

A Yes.

Q And then you incorporated the charge of assault and a violation of Section 1897 of the Penal Law against these two defendants, is that correct?

A Yes, sir.

THE COURT: Are you offering them now?

MR. SCHMIER: Yes, I offer the tire iron as Exhibit 1 in evidence, and the lug wrench as People's Exhibit 2 in evidence.

THE COURT: They will both be received, to which you object, I assume.

MR. SIEGEL: I object upon the ground that the police officer did not have probable cause because it has not been established as yet by the police officer that the [fol. 20] information he received came from a reliable and confidential informer upon whom he could rely.

THE COURT: Objection overruled.

MR. SIEGEL: I respectfully except.

(People's Exhibits 1 and 2 for identification received in evidence and so marked.)

BY MR. SCHMIER:

Q Patrolman Sewell, you drew this complaint against these defendants.

A Yes sir.

Q And you were the arresting officer.

A Yes, sir.

Q Did there come a time when these defendants were arraigned before a judge in the Felony Court.

A Yes, sir.

Q Did there come a time when the arraignment took place and was concluded?

A Yes, sir.

Q Tell us what happened after the arraignment was concluded. What, if anything, did you do with respect to these defendants and what, if anything, did they say or do to you?

A At the arraignment, the two defendants were placed on—

MR. SIEGEL: I object to that. The question was after arraignment.

THE COURT: After the arraignment. Do you understand that?

[fol. 21] THE WITNESS: Yes, your Honor.

THE COURT: After they were being returned to the pen.

THE WITNESS: Yes, Sir. After the arraignment I was returning these two defendants to the Correction Offices, the cells located in the rear of the court. At the doorway leading from the court, one of the defendants—

Q Which one, if you know.

A Ralph Picirillo.

Q Will you point out Ralph Picirillo.

A The gentleman seated next to Mr. Siegel.

Q Proceed.

A He asked me if there was something I could do for them as far as changing my story regarding what happened.

MR. SIEGEL: I object to that. May we approach the bench.

(The following took place at the bench without the hearing of the jury.)

MR. SIEGEL: I object to it upon the grounds that even though it may be part of the res gesti, it is also an admission and confession, and for that reason I object to it.

THE COURT: Objection overruled.

MR. SIEGEL: I respectfully except.

[fol. 22] (In open court.)

BY MR. SCHMIER:

Q What else did they say, officer?

A They asked me if it was possible to get rid of one of the lug wrenches and they offered me a sum of money.

Q Would you try to give us the exact conversation as you recall it, instead of a conclusion.

THE COURT: He stated that they asked him to change the story. Is that what they asked you?

THE WITNESS: Yes, Sir.

THE COURT: That is Ralph Picirillo you are talking about.

THE WITNESS: Yes, Sir.

THE COURT: And also to get rid of one of the what?

THE WITNESS: Of the instruments used.

THE COURT: Was there anything else said?

THE WITNESS: Yes, they asked me—

MR. SIEGEL: I object to that.

THE COURT: Overruled.

MR. SIEGEL: I object to the "they," if your Honor please, unless he tells us who.

THE COURT: You are correct in that. Objection is sustained. Tell us what each one said. When you refer to "they," if they both spoke together you can say they [fol. 23] both did. But tell us what each one said.

A Ralph Picirillo asked me to change my story to get rid of one of the instruments. He also asked me to meet him at a particular restaurant, Bickford's Restaurant. Anthony Lobello also spoke regarding—

MR. SIEGEL: I object and move to strike that out.

THE COURT: What did he say?

THE WITNESS: Would I meet them at Bickford's Restaurant that evening.

BY MR. SCHMIER:

Q Did they give you any particular time?

A He said about 8:30.

Q You said they offered you a sum of money. What was the sum of money discussed?

A It was $1,000 or $1,500.

THE COURT: Who said something about $1,000 or $1,500?

THE WITNESS: Ralph Picirillo.

THE COURT: What did he say about $1,000 or $1,500? What did he say would be done?

THE WITNESS: If I changed my story, got rid of one of the instruments, he would give me $1,000 or $1,500.

BY MR. SCHMIER:

Q At the time of the arrest, had you secured the names of any witnesses to the circumstances which had taken place.

A Yes, I had.

[fol. 24] Q Was there any conversation between you and the defendants or either one of them as to these witnesses.

A Ralph Picirillo wanted the names of the witnesses so that they could get to the witnesses with some money, as he stated to me.

Q Did you then return the prisoners to where they were remanded?

A Yes.

Q What, if anything, did you do after that?

THE COURT: Before that, excuse me for injecting —before that, was anything said to you as you say you were leading these defendants back to the pen? Did Anthony Lobello say anything to you? I am talking about after the arraignment in the Court.

THE WITNESS: Anthony Lobello was the one— Ralph Picirillo suggested Bickford's and Anthony Lobello mentioned Bickford's Restaurant and he named the place where we should meet.

THE COURT: You mean by that the address, the location?

THE WITNESS: Yes, Sir.

BY MR. SCHMIER:

Q An was that location Flatbush Ave. and Atlantic Ave. in Brooklyn?

A Yes.

Q What did you do after the defendants were remanded, if anything?

A I immediately notified the district attorney's office.

[fol. 25] Q Don't tell us what you said, but did there come a time after that when you went to the district attorney's office?

A Immediately upon leaving the courtroom, I went directly to the Brooklyn district attorney's office.

Q Whom did you see there, if anybody?

A Mr. Panzarella.

THE COURT: Is he an Assistant District Attorney?

THE WITNESS: Yes, Sir.

Q What, if anything, took place after you spoke to Mr. Panzarella?

A I advised—

MR. SIEGEL: I object to that.

THE COURT: Overruled.

Q Did you speak to someone else?

A Yes, I spoke to Detective Jim Fallus and Detective McBride.

Q Did you see a Detective Sullivan there?

A Detective Sullivan was in the district attorney's office.

THE COURT: Where were Detective Fallus and Detective McBride?

THE WITNESS: They were originally in the courtroom when I arraigned the two defendants.

Q Did you speak to them in or near the courtroom?

A I spoke to them outside of the courtroom.

Q When you went to the district attorney's office, were you accompanied by the officer or either one of the two?

[fol. 26] A I was accompanied by Detective McBride and Detective Jim Fallus.

Q Then, you tell us, you spoke to Assistant District Attorney Edward Panzarella?

A Yes, sir.

Q What happened after you spoke to them? Withdrawn. Was the subject of your conversation that matter—

MR. SIEGEL: I object to that.

THE COURT: Objection sustained.

Q What happened after you spoke to the Assistant District Attorney and the detectives?

A They told me to keep the meeting—

MR. SIEGEL: Objected to.

THE COURT: Sustained. Don't tell us what they told you. As a result of a conversation, what did you do next?

THE WITNESS: As a result of the conversation I met with the two defendants.

Q I show you this miniphone and ask you if you saw it on a prior occasion.

A Yes.

Q When, and what were the circumstances.

THE COURT: Ask him directly. Were you set up with that?

THE WITNESS: Yes, Sir.
THE COURT: Did you wear that?
THE WITNESS: Yes, I did.
[fol. 27] THE COURT: Mark it for identification.

(Miniphone equipment marked People's Exhibit 3 for identification.)

Q When you were set up with that, were you given instructions in its operation?
A Yes, sir.
Q Did you follow those instructions?
A Yes, I did.
Q What, if anything, took place later that evining.
A I met with the two defendants at Bickford's Restaurant.
Q What time approximately did you get to Bickford's Restaurant?
A Approximately 8:30.
THE COURT: That is on Flatbush Ave., you said, and where?
THE WITNESS: It is Flatbush Ave. Extension, directly across the street from the Fox Theatre. It is Flatbush Ave. and Fulton St.
MR. SCHMIER: Your Honor, I have shown this photograph to Mr. Siegel, and I believe he has no objection to its introduction so that the jury can follow the scene. It depicts an outside picture.
THE COURT: Have you seen that?
MR. SIEGEL: Yes, and I have no objection.
MR. SCHMIER: I offer it as People's Exhibit 4 in evidence.
THE COURT: Mark it in evidence.
[fol. 28] (Photograph received in evidence and marked People's Exhibit 4.)

MR. SCHMIER: And I also offer in evidence a photograph of the interior as People's Exhibit 5.
THE COURT: It will be received as People's Exhibit 5 in evidence, the interior.

(Photograph of the interior of Bickford's Restaurant marked People's Exhibit 5 in evidence.)

BY MR. SCHMIER:

Q Approximately what time did you say you got to the restaurant?

A Approximately 8:30.

Q Were the two defendants there when you arrived.

A No.

Q Did they arrive subsequently after your arrival.

A Yes.

THE COURT: What day was this; on the 19th that you arrived at Bickford's?

THE WITNESS: No Sir. The 20th.

THE COURT: 8:30 in the morning or the evening?

THE WITNESS: The evening, Sir.

Q Just to keep the sequence, you had arraigned these defendants earlier that day on March 20th, is that right?

A Yes, sir.

Q And this was the same evening of the day of the [fol. 29] arraignment?

A Yes, sir.

Q And, according to your testimony, they had spoken to you earlier that morning, is that right?

A Yes, sir.

Q March 20th?

A Yes.

Q And you are now meeting them at 8:30 or approximately that time in the evening of the same day.

A Yes, sir.

Q Now approximately, not exactly if you can't give it to us, but approximately how long after you arrived did either one of the two defendants arrive?

A The two defendants arrived at approximately 8:40 P.M.

Q Did they arrive together?

A Yes.

Q Officer, I show you People's Exhibit 4 and I ask you what that scene represents to you.

THE COURT: It is already in the record what it represents, the exterior of Bickfords on Flatbush Extension and Fulton St.

Q Is this the restaurant you are talking about when you say you went to Bickford's Restaurant at Fulton St. and Flatbush Ave.?

A Yes.

Q Patrolman, when you went to this meeting, were you accompanied by anybody?

A Yes, I was.

Q Who accompanied you?

A Detective John Sullivan, Detective McBride, Detective Romando and Detective D'Augusto and Detective Houston.

[fol. 30] Q Did you go into the restaurant?

A Yes, I did.

Q I want you to look at People's Exhibit 5, and I ask you to step down if you have to, and could you point out where you were seated if that location is shown on People's Exhibit 5.

THE COURT: Is the location on there?

THE WITNESS: Yes, Sir.

THE COURT: You were seated at a table, you say.

THE WITNESS: Yes, Sir.

THE COURT: Put an X indicating the table where you were sitting.

THE WITNESS: Yes, Sir.

(Complying with request.)

THE COURT: Let the record indicate that the witness marked an X at the table where he says he was sitting, which is indicated on People's Exhibit 5 in evidence.

BY MR. SCHMIER:

Q Partolman Sewell, at the time that you were sitting at that table, did Labello and Picirillo join you?

A Yes they did.

Q Was anyboy else seated at the table?

A No, sir.

Q Was your miniphone in operation at that time?

A Yes, sir.

Q To the best of your recollection, what if anything [fol. 31] did the defendants say to you at the table and what did you say to them.

THE COURT: Tell us what each one said, if anything.

THE WITNESS: Ralph Picirillo asked me to give them the names of the two witnesses, so that they could get to them with some money, to change my story and to get rid of one of the instruments. Anthony Labello also spoke. He wanted me to change my story and give them the names of the witnesses and get rid of one of the pieces of evidence.

Q Was there any mention of money.

A Yes, sir.

Q What money was mentioned, if any.

A G-note a thousand dollars.

MR. SIEGEL: May we know by whom, sir.

THE COURT: Which one mentioned anything about money?

THE WITNESS: Both, your Honor.

THE COURT: Both said that they would give you a G-note?

THE WITNESS: Yes, Sir.

THE COURT: They would each give you a G-note.

THE WITNESS: No, Sir. It was a G-note. One spoke and said, "We will give you a G-note," and the other one said, "We will give you a thousand dollars, a G-note." It was one G-note.

[fol. 32] BY MR. SCHMIER:

Q Was there any money mentioned with respect to the witnesses, and what if anything were you to do?

A They stated that they wanted the names of the two witnesses to get to them with some money. They assured me that if I gave them this information, that nothing would happen to me, that I would not get myself into any type of trouble, that they had high officials in the N. Y. Housing Authority who would guarantee that nothing would happen to my job.

Q Did there come a time when that meeting broke up?

A Yes, it did.

Q Did you at any time indicate to them or give them to believe that you were going along with their offer?

A Yes, I did.

Q Had you any intent of going along at that time with their offer?

MR. SIEGEL: I object to that.

THE COURT: Objection overruled.

A No, sir.

Q What, if anything, did you do after you left the meeting? Where, if anyplace did you go?

A I returned to the district attorney's office in the Municipal Building.

Q When you returned, were you still wearing the miniphone?

A Yes, sir.

[fol. 23] Q What, if anything, happened to the miniphone in your presence.

A It was removed.

Q By whom?

A By Detective John Sullivan.

Q Did he remove it in your presence?

A Yes, he did.

Q Did you remain with Detective Sullivan while anything was done with the miniphone?

A Yes.

Q What, if anything, was done with the miniphone?

A It was turned off and it was played back.

Q Did you hear the playback?

A Yes, I did.

Q Did you hear the parties speaking?

A Yes, I did.

Q Were those the voices of Labello and Picirillo?

A Yes, sir.

Q And was it the conversation you had had with them in the restaurant.

A Yes, sir.

Q Was it the exact words that you had used and the exact words that they had used as best you could recall?

A Yes, sir.

MR. SCHMIER: Your witness.

CROSS EXAMINATION BY MR. SIEGEL:

Q Did you testify before the Grand Jury?

A Yes, sir.

MR. SIEGEL: May we have the Grand Jury testi-
[fol. 34] mony of this witness?

MR. SCHMIER: I have here the original Grand Jury minutes of March 22nd, 1965, of this witness confined to pages 4 to 13.

THE COURT: Mark it People's Exhibit 6 for identification.

(Grand Jury testimony of Patrolman Sewell marked People's Exhibit 6 for identification.)

THE COURT: Are there any other statements made by this witness?

MR. SCHMIER: No, the various detectives have their notes. I have no other statement of this witness.

BY MR. SIEGEL:

Q Officer, were you at any time interrogated by the district attorney's office in connection with this case?

A Interrogated?

Q Questioned.

A Yes.

Q You sat down with an Assistant District Attorney and told him what happened, did you not?

A Yes, sir.

Q Whom did you talk to?

A I have spoken to Assistant District Attorney Panzarella.

Q At the time you were talking to him was there anyboy else in the room?

A Yes.

Q Was anybody taking any notes in the room?

[fol. 35] A I don't know.

Q Did you see anybody—

THE COURT: Do you recall whether there was a recorder or stenographer there while you were being interrogated by Mr. Panzarella; do you recall?

THE WITNESS: There was no stenographer, no.

THE COURT: Do you know whether anybody was taking down any notes of any kind? That's what the lawyer wants to know.

THE WITNESS: When I spoke to Mr. Panzarella, no Sir.

BY MR. SIEGEL:

Q When you were questioned by Mr. Panzarella, you gave him answers to the questions, is that right?
A I was not asked. You say answers to questions.
Q Did he ask you any questions?
A Yes, he did.
Q Did you make any answers?
A Yes, I did.
Q Did you see him have a pad in front of him?
A I believe so.
Q Did he make notations on the pad?
A I believe so.

MR. SIEGEL: I ask for those notations if your Honor please, if they reflect the statements of this witness.

THE COURT: Do you have it in the file, Mr. Schmier?

MR. SCHMIER: I don't know, your Honor.

THE COURT: Supposing we take a brief recess and [fol. 36] you get those notes if you have them, and you might as well get any other notes of any other assistant or police officer.

Mr. Foreman and Ladies and Gentlemen of the Jury, we will take a brief recess for the reason you have observed here. We will give them an opportunity to search for the papers. I must caution you, please keep your minds open and don't form any opinion with respect to the guilt or innocence of these defendants or either of them.

(Jury left courtroom and recess taken.)

(Jury returned—trial continued.)

THE COURT: Do you waive the calling of the roll, Mr. Siegel?

MR. SIEGEL: Yes, your Honor.

THE COURT: All the jurors are present and the defendants are present in Court with their counsel and the Assistant District Attorney is present.

Mr. Siegel, I have been advised that the District Attorney wishes to compile all the statements for you, and he is not sure about one particular statement. So I think we will take a recess until tomorrow morning.

Mr. Foreman and Ladies and Gentlemen of the Jury, we will recess until tomorrow morning. I must caution you, please don't discuss this case among yourselves or with anyone else and don't form any opinion about it. [fol. 37] Permit nobody to talk to you about this matter, and in the event that there is any release, news release about this case, I caution you not to read the subject matter.

Now I know it is pretty hard for people to ignore newspaper reports if they should appear. I know nothing about that, but I want you to be very careful because you cannot permit any extraneous matters to enter into your deliberations if this case is submitted to you for your determination. If anybody at home tries to talk to you about the case, of course it is very likely they will ask you what kind of case you are on, and you may tell them, but please don't discuss any of the matters because you may get some thoughts, and there may be something they say to you which you may not be able to distinguish at a later time as to whether it is testimony or something that was told you. So please heed my admonition. It is very important that everybody get a fair and impartial trial, and that means that it must be determined on the evidence and the law. So please heed my admonition. You may go now and return here tomorrow morning at 10 o'clock.

(Jury left courtroom and trial adjourned to Dec. 17, 1965 at 10:00 A.M.)

(Defendants remanded.)

Plea

IN THE SUPREME COURT OF THE
STATE OF NEW YORK, KINGS COUNTY

CRIMINAL TERM : PART III

Ind. No. 1053—1965

Bribery

PEOPLE OF THE STATE OF NEW YORK

against

ANTHONY LABELLO, RALPH PICIRILLO, DEFENDANTS

Brooklyn, N. Y.

MINUTES OF DECEMBER 17, 1965

Before:

HON. DAVID L. MALBIN

Justice

Appearances:

BENJAMIN SCHMIER, ESQ.,
Asst. District Attorney
for the People

HERBERT S. SIEGEL, ESQ.,
for the Defendants

MARTIN BARRIS, CSR
Official Reporter

[fol. 2] (During the course of trial, the following occurred.)

MR. SIEGEL: If your Honor please, at this time the defendants desire permission to withdraw their plea of not guilty heretofore entered, and offer to plead guilty to an attempt to commit the crime of bribery, to cover and satisfy this indictment and all other matters pend-

ing and known to the district attorney of Kings County as of this date.

THE COURT: What does the district attorney have to say?

MR. SCHMIER: That plea, your Honor, is acceptable to the People, and we accept that part of the offer in which any matters known to the People may be covered at this time.

MR. SIEGEL: That is what I said—known as of this date.

THE COURT: Anthony Labello, will you please rise.

DEFENDANT LABELLO: Yes, Sir.

THE COURT: Is Mr. Herbert S. Siegel your attorney?

DEFENDANT LABELLO: Yes, Sir.

THE COURT: Did you hear him now make an application to the Court, in which he sought permission to withdraw the plea of not guilty that you had heretofore [fol. 3] entered in this case, and requested permission to interpose a plea of guilty to the crime of an attempt to commit the crime of bribery in full satisfaction of the indictment, and also to cover any pending matters of which the district attorney has any knowledge. Do you understand that?

DEFENDANT LABELLO: Yes, Sir.

THE COURT: Is that clear to you?

DEFENDANT LABELLO: Yes, your Honor.

THE COURT: You understand if the Court accepts your plea of guilty to the crime of an attempt to commit the crime of bribery, that indicates that you are pleading guilty to the fact that you did offer the bribe to the police officer that you heard testify in this case thus far; is that clear?

DEFENDANT LABELLO: Yes, your Honor.

THE COURT: You know that that is a felony; you understand that committing the crime of attempted bribery is a felony; you understand that.

DEFENDANT LABELLO: Yes, Sir.

THE COURT: Did you ask your lawyer to make that offer of guilty to attempt to commit the crime of bribery?

DEFENDANT LABELLO: Yes, Sir.

[fol. 4] THE COURT: And you are doing that of your own free will?

DEFENDANT LABELLO: Yes, Sir.

THE COURT: Now, is it a fact that on the day you are alleged to have made this offer to bribe this police officer of the Housing Authority, Patrolman Sewel; did you make such an offer?

DEFENDANT LABELLO: Yes, your Honor.

THE COURT: Who was with you when you made this offer?

DEFENDANT LABELLO: Ralph Picirillo.

THE COURT: The two of you were together?

DEFENDANT LABELLO: Yes, your Honor.

THE COURT: And the officer said that you made an offer to him that you should destroy some of the evidence.

DEFENDANT LABELLO: Yes, your Honor.

THE COURT: And also to advise you of certain witnesses, so that they may attempt to be intimidated, or that you might reach them to affect their testimony; was that the purpose of your offer?

DEFENDANT LABELLO: Yes, your Honor.

THE COURT: There is no question about that. You freely and openly in this Courtroom admit that you [fol. 5] attempted to bribe this officer.

DEFENDANT LABELLO: Yes, your Honor.

THE COURT: If I accept this plea, do you understand that I want to ascertain from you, did your lawyer in any way promise you what sentence I would impose upon you?

DEFENDANT LABELLO: No, your Honor.

THE COURT: Did the district attorney promise you what the sentence in this case would be?

DEFENDANT LABELLO: No, your Honor.

THE COURT: You understand that bribery calls for ten years imprisonment, and attempted bribery calls for half of that; but the Judge has a right to impose a sentence within the scope of what the law provides; that is, anything from one up to five years. The Judge can suspend sentence if he wants to. He can give you any figures within that scope; he can give you one to two, or two to four, anything that he thinks is applicable considering your background; do you understand that?

DEFENDANT LABELLO: Yes, Sir.

THE COURT: Under those conditions, do you wish to plead guilty to the crime of attempted bribery?

DEFENDANT LABELLO: Yes, your Honor.

[fol. 6] THE COURT: I have not indicated to you what I am going to do with you by way of sentence, have I?

DEFENDANT LABELLO: No, your Honor.

THE COURT: Because now is the time, if you don't want to plead guilty, it is a matter of your own choosing; you can stand trial and continue on with it, and the jury will know nothing about this. The jury is being detained in the jury room while this proceeding is taking place. Do you understand that?

DEFENDANT LABELLO: Yes, Sir.

THE COURT: Under the circumstances, you say that it is your own desire to plead guilty to the crime of an attempt to commit the crime of bribery.

DEFENDANT LABELLO: Yes, Sir.

THE COURT: And with the understanding that there has been no promise as to the sentence that will be imposed upon you; is that clear?

DEFENDANT LABELLO: Yes, Sir.

THE COURT: You, Ralph Picirillo, you heard your lawyer, Mr. Siegel, make an offer in your behalf that he desires to withdraw your plea of not guilty to the indictment and plead guilty to the crime of an attempt to commit the crime of bribery; do you understand that?

[fol. 7] DEFENDANT PICIRILLO: Yes, Sir.

THE COURT: Did he do that in accordance with your wishes? Did you ask your lawyer to do that in your behalf?

DEFENDANT PICIRILLO: Yes, your Honor.

THE COURT: And you want to plead guilty to an attempt to commit the crime of bribery.

DEFENDANT PICIRILLO: Yes, your Honor.

THE COURT: And you are doing that of your own free will.

DEFENDANT PICIRILLO: Yes, Sir.

THE COURT: Nobody is forcing you to plead guilty.

DEFENDANT PICIRILLO: No, your Honor.

THE COURT: And you are pleading guilty because you are guilty of the offer to bribe this police officer who appeared in open Court as a witness against you; is that correct?

DEFENDANT PICIRILLO: Yes, your Honor.

THE COURT: And is it a fact that you were present with your companion, Labello, when the two of you sought to bribe this officer?

DEFENDANT PICIRILLO: Yes, your Honor.

THE COURT: And to forget about the exhibits in [fol. 8] this case; that is, the lug wrench and the tire iron?

DEFENDANT PICIRILLO: Yes, your Honor.

THE COURT: Did you hear Labello say that he and you were present when the two of you offered the officer $1,000 in order to forget about the weapons in this case?

DEFENDANT PICIRILLO: Yes, Sir.

THE COURT: And also to give you the names of the witnesses?

DEFENDANT PICIRILLO: Yes, Sir.

THE COURT: And that is what you attempted to do; is that right?

DEFENDANT PICIRILLO: Yes, Sir.

THE COURT: The money was not actually passed.

DEFENDANT PICIRILLO: No, your Honor.

THE COURT: Did your lawyer or the district attorney make any promise to you as to what the sentence will be in this case?

DEFENDANT PICIRILLO: No, your Honor.

THE COURT: You understand that by pleading guilty, you are admitting to the facts in the indictment, and also, you are admitting that what the officer said was true, and is it a fact that it is true?

DEFENDANT PICIRILLO: Yes, your Honor.

[fol. 9] THE COURT: Now, were you present with Labello in Bickford's restaurant that night on March 20th?

DEFENDANT PICIRILLO: Yes, your Honor.

THE COURT: And is that where you were going to go through with this offer and bribe the police officer?

DEFENDANT PICIRILLO: Yes, your Honor.

THE COURT: It was your intention to do so with Labello.

DEFENDANT PICIRILLO: Yes, your Honor.

THE COURT: Has there been any promise made to you by anyone in this case as to what sentence I will impose upon you?

DEFENDANT PICIRILLO: No, your Honor.

THE COURT: I have not made any promise to you, have I?

DEFENDANT PICIRILLO: No, your Honor.

THE COURT: If this plea is accepted, you are to understand that there are, as I indicated to your co-defendant, that I have, as the Judge, the right to impose a sentence anywhere within the span of up to five years; do you understand that?

DEFENDANT PICIRILLO: Yes, your Honor.

THE COURT: I have a right to give you the sen-
[fol. 10] tence that I think your background and the circumstances in this case would warrant; do you understand that?

DEFENDANT PICIRILLO: Yes, your Honor.

THE COURT: Of course, consideration should be given, and probably will be given to the defendant who pleads guilty and admits his crime before a jury establishes that fact. Do you understand that?

DEFENDANT PICIRILLO: Yes, your Honor.

THE COURT: I want to make it crystal clear that I never indicate what my sentence is going to be; but in view of the fact that I read the record over as to a prior plea, and I am saying this for your information, Mr. District Attorney, as well as the defendant, this Court has no intention whatsoever—so here is the time for you now to change your mind if you so desire—there was an alleged indication that you were going to get a sentence that would run exactly concurrently with the sentence that you are now serving on the assault. Do you understand? That would be within that time. Do I make it clear?

DEFENDANT PICIRILLO: Yes, Sir.

THE COURT: Any sentence that I am going to impose is going to start after you complete the other sen-

[fol. 11] tence. Is that clear to you?

DEFENDANT PICIRILLO: Yes, Sir.

THE COURT: Is that clear to you, Labello?

DEFENDANT LABELLO: Yes, your Honor.

THE COURT: Both defendants answer in the affirmative. I want you to know that. I don't want any misapprehension. I don't want you to go along any assumption that I am going to give you the same sentence you got and let it run concurrently with the other. Do you understand that?

DEFENDANT PICIRILLO: Yes, Sir.

DEFENDANT LABELLO: Yes, Sir.

THE COURT: I may take into consideration the fact that you are already serving time on a crime that is practically the predicate of this crime here. Do you understand?

DEFENDANT PICIRILLO: Yes, Sir.

THE COURT: I want it clearly understood. All right. Under the circumstances, Mr. Clerk, both of these defendants having indicated their desire to plead guilty to an attempt to commit the crime of bribery, and that plea being acceptable to the district attorney, after you advise them under Section 335-B, the Court will accept [fol. 12] the plea to the crime of attempt to commit the crime of bribery.

THE CLERK: What is your name?

DEFENDANT PICIRILLO: Ralph Picirillo.

THE CLERK: What is your name?

DEFENDANT LABELLO: Anthony Labello.

THE CLERK: Do you understand English?

DEFENDANT LABELLO: Yes, sir.

DEFENDANT PICIRILLO: Yes, sir.

THE CLERK: Ralph Picirillo and Anthony Labello, under Indictment No. 1053 of 1965, pursuant to Section 335-B of the Code of Criminal Procedure, you are advised that if either of you has been convicted of any crime or offense, that fact may be established after your plea of guilty in this action now before the Court, and you may be subjected to different or additional punishment.

Ralph Picirillo and Anthony Labello, having been so advised, do you now both withdraw your plea of not guilty to Indictment No. 1053 of 1965, and do you now plead guilty to the crime of attempt to commit the crime of bribery, a felony, that plea to cover Indictment No. 1053 of 1965, and any pending matters that the district attorney has knowledge of; do you so plead?

[fol. 13] DEFENDANT PICIRILLO: Yes, sir.

DEFENDANT LABELLO: Yes, sir.

THE CLERK: Do both of you waive the fixation of a definite date for sentence?

DEFENDANT PICIRILLO: Yes, sir.

DEFENDANT LABELLO: Yes, sir.

MR. SIEGEL: If your Honor pleases, on the question of date, in view of the fact that there is a probation report, which is as recent as about a month ago when it came before Mr. Justice Gittelson, and at the request of the defendants, could we have an immediate sentence? By immediate, I mean next week.

THE COURT: I will advise the Probation Department. They are not having any sentences at all during Christmas week. They are having it right before, but I am going away, and I will therefore set this sentence down for January 5, 1966.

(Defendants sworn and pedigrees taken.)

(Defendants remanded.)

IN THE SUPREME COURT OF THE
STATE OF NEW YORK, KINGS COUNTY

CRIMINAL TERM : PART 3

Ind. No. 1053—1965

PEOPLE OF THE STATE OF NEW YORK

against

RALPH PICIRILLO, ANTHONY LA BELLO, DEFENDANTS

Brooklyn, N. Y.

MINUTES OF JANUARY 19, 1966

Before:

HON. DAVID L. MALBIN

Justice

Appearances:

AARON E. KOOTA, ESQ.,
District Attorney
for the People

HERBERT S. SIEGEL, ESQ.,
for the Defendant

MARTIN BARRIS, CSR
Official Court Reporter

[fol. 2] THE CLERK: Indictment No. 1053 of 1965, Ralph Picirillo and Anthony La Bello, represented by Mr. Herbert Siegel. The district attorney, Mr. Aaron E. Koota, is present.

Ralph Picirillo and Anthony La Bello, the sentence of the Court is about to be pronounced upon you. If you have any legal cause or any other reason why sentence of the Court should not be pronounced upon you at this time, you may speak to the Court or have your attorney speak for you. Is there any legal cause?

DEFENDANT PICIRILLO: No legal cause at this time.

DEFENDANT LA BELLO: No legal cause at this time.

MR. SIEGEL: If your Honor please, I know that by now you have a full and complete probation report, and therefore I most respectfully ask your Honor to give these defendants every possible consideration consistent with all of the facts and circumstances of this case, having in mind the several conferences between the Court, the assistant district attorney, and counsel for the defense.

THE COURT: Is there anything you would like to say, Mr. Koota?

MR. KOOTA: Yes, if the Court pleases; customarily, [fol. 3] as your Honor knows, our office takes no position on questions of sentence, that being one which the law delegates exclusively to the discretion of the Court, and it is rare, indeed, that I personally appear on a sentence, even in those instances when the position of our office is made known to the Court. But I regard this case as so important to the administration of justice in Kings County that I ask your Honor's indulgence so that I may personally express our views insofar as the sentence of these defendants is concerned.

I should like to acquaint the Court with some facts which may be within the ken and knowledge of the Court, but I see no harm in their repetition if they are. The original investigation into the circumstances under which Mr. Jack Graham, who was assaulted, came to our office, as I recall, was through the Department of Investigation, to whom Mr. Graham had originally complained. Mr. Graham came to our office and I interviewed him personally. This was some time after March of 1964, and there he told me about the assault that had been committed upon him by these defendants, and I immediately directed that special attention be given to this case.

[fol. 4] Mr. Graham at the same time told us about certain machinations and improper conduct and facts which would tend to indicate that conspiracies were being conducted by groups of painters in connection with the New York City Housing Authority. Mr. Graham's position was that he believed that he was assaulted as a

result of his failure to go along with the clique, or the ring that was working in cahoots, so he said, with certain members of the New York City Housing Authority, and it was obvious to me at this time that the case transcended the ordinary run-of-the-mill, or routine type of assault where robbery may be a motive.

What struck me as peculiar in that assault case was the fact that when Mr. Graham was at this housing project, the name of which escapes me at the moment; it was a housing project in Brooklyn, and he was there to meet one of the representatives of the New York City Housing Authority; I think he was a superintendent of painting at that time; he was told by this individual, whom he was supposed to meet, to park his automobile in a certain part of the parking lot adjacent to the housing development, and where this representative of the Housing Authority would meet him. In other words, [fol. 5] under normal circumstances, if they arranged a meeting at the project, they would meet in the office of the project, but in this instance, the representative of the Housing Authority said, "You take your car and park it in this space, and then come out and I will meet you." It was perfectly obvious to me and to my associates, who were not altogether without experience in the field of criminal practice, that there was something behind this assault that was deeper and required further investigation.

So we moved this assault case for trial, and the defendants pleaded guilty and were sentenced. Before the sentence, we asked the Court—it was Judge Barshay, I recall—to withhold the execution of the sentence to afford these defendants an opportunity to cooperate with me in my office, so that we could find out how high this thing went; who put these men up to committing this assault. That is what we were vitally interested in, aside from the fact that an unprovoked assault had been committed and the perpetrators should be punished. We were interested in a more fundamental problem—who put these men up to this assault and what motive inspired this [fol. 6] assault. But they were intransigent. The sentence was executed, and we then brought them back to

the grand jury and interrogated them in the grand jury, and there they told us a story that comes right out of Grimm's Fairy Tales. They told us they were sitting in the cafetria and some man came over to them and asked them if they wanted to make $50, and they said yes, and he took them in the automobile over to this project, and there he said, "I want you to beat up a certain individual," and this man, an unknown individual, gave them some tire irons with which the assault was committed.

Now, their description of this individual was that he was tall and short, that he was fat and thin, that he had dark hair and light hair. So your Honor can see that these men were just stalling.

Our attention had already come to the subject of the bribe, or attempted bribe that had been committed with reference to Patrolman Sewell, but in order to get at the bottom of this; to get at the higher-ups who were responsible for his assault, I would have gone to the extent of not prosecuting these individuals for the bribery, and give them immunity against that, if they would tell us [fol. 7] who put them up to this, and I would have seen that clemency was exercised, if possible, even in the assault case, because it was more important for the interest of justice that we ascertain the identity of these individuals.

Mr. Graham gave us additional information concerning the so-called conspiracy among certain painting contractors and with some officials in the New York City Housing Authority, which we investigated very carefully. But finding that there was no jurisdiction in the county of Kings, I communicated with Mr. Hogan, the district attorney of New York County; a conference was held at our office, and all the information available to us, including Mr. Graham's statements, were turned over to the New York County district attorney's office, and it is a matter of record that following their investigation, several indictments were procured.

Now, we are confronted again with this question as to whether these men will tell us the identity of the person who put them up to this assault; but there is

even something that is deeper at this moment than the identity of that individual, because we have some evidence that another person in the New York Housing Authority, whom I will not identify at the moment, en- [fol. 8] deavored to get Patrolman Sewell to accept the bribe that had been offered by these defendants and to go along with them in the attempt to kill this assault case, and it is the identity of this other individual and the part that he played in this attempted bribe that we are seeking to ascertain.

What is behind all this? Who in the New York City Housing Authority is afraid of what these defendants are going to tell? Who is sealing the lips of these defendants? They are abiding by the code of the underworld. They won't talk, apparently, under any circumstances.

The sentence was on two weeks ago, as I understand it, and I think Mr. Schmier made our position clear. They had two weeks within which to come to us and tell us who was behind all of this, and they are mute. Their lips have been effectively sealed.

I am going to ask that the Court, in view of all these circumstances, impose the kind of sentence to run in addition to the sentence that has been impose upon them for the assault, which would meet with the interest of justice, and I am sure, your Honor, that no matter what [fol. 9] that sentence is, our investigation will continue until we get to the bottom of this.

THE COURT: Is there anything further that you want to say?

MR. SIEGEL: I don't think so. I think the People have their pound of flesh. They have already sentenced these people, and they are facing another sentence.

THE COURT: Before I pronounce the sentence of this Court, Mr. Siegel, I will afford each one of these defendants an opportunity to say whether they want to make any further disclosures, as to whether anyone else is behind this matter. It is apparent to the district attorney's office that there is someone behind these two defendants. It was not their individual act. I will give them an opportunity in open Court, if they wish, to make any disclosure. If they do, I will go along with

the district attorney. I will hold up the sentence, and if they do wish to cooperate, I might even be inclined to suspend the execution of any sentence, if it is of any value to the district attorney in his effort to track down those who are behind this scheme, this conspiracy to defeat the legitimate ends of the painting trade, or whatever organizations are concerned.

[fol. 10] MR. SIEGEL: They just advised me they have no information.

THE COURT: The sentence of the Court is, as I indicated at the time that I took this plea, when the plea had been heretofore taken and vacated, as I understand it because Mr. Koota was not in accord with the sentence that was going to be pronounced, that would run concurrently with the sentence of assault that was imposed by Mr. Justice Barshay at the time that he had the assault charge, and I indicated to the defendants and also to you, Mr. Siegel, that any sentence that I was going to impose was going to commence after the expiration of the sentence that they are now serving in Sing Sing Prison. Is that so?

MR. SIEGEL: That's right.

THE COURT: The sentence of the Court is that you, Ralph Picirillo, shall be sentenced to Sing Sing Prison for a term of one year and six months to three years, and that that sentence shall not commence until the expiration and the completion of the sentence that you are now serving for the crime of attempted assault in the second degree.

The sentence of the Court as to you, Anthony La [fol. 11] Bello, is that you be committed to Sing Sing Prison for a term of one year and six months to three years, and it is the intention of the Court that that sentence shall not commence to be served until the sentence that you are now serving for the crime of attempted assault in the second degree shall have been completed.

The defendants stand committed.

(Defendants remanded.)

At a Term of the Appellate Division of the Supreme Court of the State of New York, Second Judicial Department, held in Kings County

HON. GEORGE J. BELDOCK, *Presiding Justice*
HON. SAMUEL RABIN
HON. A. DAVID BENJAMIN
HON. FRED J. MUNDER
HON. M. HENRY MARTUSCELLO
Associate Justices

THE PEOPLE OF THE STATE OF NEW YORK, RESPONDENT

v.

ANTHONY LA BELLO and RALPH PICCIRILLO, APPELLANT

ORDER ON APPEALS FROM JUDGMENTS OF CONVICTION—June 3, 1968

In the above entitled action, the above named Anthony La Bello and Ralph Piccirillo, defendants in this action, having appealed to this court from two judgment of the Supreme Court, Kings County (each as to a respective one of the defendants) both rendered January 19, 1966; and the said appeals having been submitted by Theodore Rosenberg, Esq., of counsel for appellant LaBello, by Nathan Z. Dershowitz, Esq., of counsel for the appellant Piccirillo and by Stanley M. Meyer, Esq., of counsel for the respondent. and due deliberation having been had thereon; and upon this court's decision slip heretofore filed and made a part hereof, it is:

ORDERED that the judgments appealed from are hereby affirmed. Beldock, P.J., Rabin, Benjamin and Munder, JJ., concur. Martuscello, J., dissents and votes to reverse the judgments and to dismiss the indictment, with dissenting memorandum as set forth in decision slip dated June 3, 1968.

Enter:

HERMAN M. POGUL
Clerk of the Appellate Division

IN THE APPELLATE DIVISION OF THE SUPREME COURT SECOND JUDICIAL DEPARTMENT

THE PEOPLE OF THE STATE OF NEW YORK, RESPONDENT

v.

ANTHONY LA BELLO and RALPH PICCIRILLO, APPELLANTS

OPINION—June 3, 1968

Two judgments of the Supreme Court, Kings County (each as to a respective one of the defendants), both rendered January 19, 1966, affirmed. No opinion. Beldock, P. J., Rabin, Benjamin and Munder, JJ., concur; Martuscello, J., dissents and votes to reverse the judgments and to dismiss the indictment, with the following memorandum: Defendants were indicted for the crime of bribery. They pleaded guilty to attempted bribery and were sentenced to a prison term. Prior to the entry of their guilty pleas, they moved for inspection of the Grand Jury minutes and for dismissal of the indictment on the ground that they had been granted immunity from prosecution for the crime charged therein. The court below directed the prosecution to furnish defendants with a copy of the Grand Jury minutes, but denied the motion to dismiss the indictment, ruling that this crime was not covered by the immunity granted them. The appeals from the judgments bring up for review the propriety of the denial of dismissal; and the only question presented thereby is whether defendants were immunized from prosecution on the bribery charge. The material facts underlying this question are as follows: On March 19, 1964, defendants were arrested by Patrolman Sewell for assaulting one Graham with tire irons. These weapons were recovered by Sewell at the time the arrest was made. Defendants allegedly on March 20, 1964 offered to give Sewell $1,000 or $1,500 to get rid of the weapons. Sewell immediately reported this offer to an Assistant District Attorney of Kings County. Defendants, how-

ever, were not arrested in connection with the alleged bribe offer until after they were indicted therefor on July 14, 1965. In the meantime, they were indicted for the assault committed on Graham and on January 11, 1965 were convicted upon their pleas of guilty of attempted assault in the second degree and each was sentenced to a prison term of one year and three months to two years and six months. In March, 1965, a Kings County Grand Jury undertook to conduct an investigation to ascertain whether any criminal conspiracies existed in connection with the assault on Graham. In charge of this investigation was the selfsame prosecutor to whom Officer Sewell had reported the afore-mentioned bribe offer on March 20, 1964. Defendants were recalled from prison and taken before the Grand Jury on March 18, 1965 to testify as witnesses. La Bello, the first called, was sworn and gave as his address Sing Sing Prison. The prosecutor, after informing him of the purpose of the investigation, asked him whether he had been indicted and convicted for the assault committed on Graham. La Bello refused to answer on the ground that he might thereby incriminate himself. The prosecutor thereupon stated to him that he had been convicted and sentenced for the assault and could not again be prosecuted therefor; that the Grand Jury, nevertheless, would vote on whether to grant him immunity; and that if immunity were granted he could not be prosecuted for his answers. Asked if he understood the statement thus made to him, La Bello replied, "Yes. I'd like to see my attorney." The prosecutor then advised him that the Grand Jury would vote on whether to grant him immunity; and that, if it were granted and he refused to answer questions, an application would be made to hold him in contempt. La Bello was excused. The Grand Jury voted to grant La Bello immunity pursuant to section 2447 of the Penal Law. Thereafter, he returned to the Grand Jury room and, after being apprised of the immunity conferred, answered all questions. In the course of his examination he testified, among other things, that he had been convicted of the assault on Graham and sentenced to Sing Sing; that he and Piccirillo had

assaulted Graham tire irons; that a person known to him only as Tony had hired them for $100 to commit the assault and had provided the weapons used; and that, while assaulting Graham, his weapon fell, and he ran away and was caught by a policeman. Defendant Piccirillo was sworn and apprised of the purpose of the investigation. He was also granted immunity and, after being advised of its meaning, stated that he would answer all questions but would like to speak to his attorney. The prosecutor thereupon assured him that he was not a defendant but a witness; that he could not be prosecuted; and that there was no reason to confer with his attorney. Piccirillo thereafter answered all questions, making the same admissions as had been made by La Bello, moreover stating that the tire irons in the possession of the police were the instruments they had used. On March 22, 1965, four days after defendants testified, Officer Sewell was called as a witness before the same Grand Jury. He testified that he had arrested defendants on March 19, 1964 for the assault on Graham that they had told him they were hired to commit the assault; that weapons which he then produced had been recovered from defendants; that, after defendants were arraigned in the Criminal Court in Brooklyn on May 20, 1964, they offered him $1,000 or $1,500 to get rid of the weapons; and that he went directly to the District Attorney's office and reported the bribe offer to the aforementioned prosecutor. Defendants were indicted for bribery on July 14, 1965; and on January 19, 1966 each was sentenced, on his plea of guilty, to a prison term of one year and six months to three years, to commence at the expiration of the sentence which had been imposed upon him for the assault conviction. The immunity granted pursuant to section 2447 of the Penal Law was complete and as broad in its scope and effect as the protection afforded by the constitutional prohibition against self-incrimination (*People* v. *De Feo*, 308 N. Y. 595). After such immunity was granted, defendants were required to testify in the investigation under pain of prosecution for criminal contempt. They, however, were protected from prosecution for any answers proving them

guilty of any crime for which they might be prosecuted, or, falling short of proving such crime in its entirety, would prove some part or feature thereof, when combined with proof of other circumstances which others might supply (*Matter of Doyle*, 257 N. Y. 244; *People ex rel. Coyle v. Truesdell*, 259 App. Div. 282). Defendants' admissions that they committed the assault on Graham with tire irons, though made in response to questions relating to the assault for which they had been convicted, did not diminish the force of the immunity granted them, since the admissions related to facts and circumstances which would require the official conduct they allegedly sought to frustrate, and thus constituted a link in the chain of evidence necessary to prove the crime for which they were indicted (cf. *Malloy v. Hogan*, 378 U. S. 1). Nor was their immunity in any wise undermined by the fact that Officer Sewell's testimony, standing alone, was sufficient to establish that crime (*People v. Bermel*, 71 Misc. 356).

No. 414

Form 6
Remit. # 2808
Ind. # 1053/65
App. # 6677

COURT OF APPEALS

STATE OF NEW YORK, SS:

PLEAS in the Court of Appeals, held at Court of Appeals Hall, in the City of Albany, on the 24th day of April in the year of our Lord one thousand nine hunderd and sixty-nine, before the Judges of said Court.

WITNESS,

The HON. STANLEY H. FULD,
Chief Judge, *Presiding*.

RAYMOND J. CANNON,
Clerk.

REMITTITUR—April 24, 1969

2. No. 414. 68

THE PEOPLE &C., RESPONDENT

vs.

ANTHONY LABELLO and RALPH PICCIRILLO, APPELLANTS

BE IT REMEMBERED, That on the 9th. day of September in the year of our Lord one thousand nine hundred and sixty-eight, Anthony La Bello and Ralph Piccirillo, the appellants in this cause, came here unto the Court of Appeals, by Theodore Rosenberg and Anthony F. Marra, their attorneys, and filed in the said Court Notices of Appeal and return thereto from the judgment of the Appellate Division of the Supreme Court in and for the Second Judicial Department. And The People &c., the respondent—in said cause, afterwards appeared in said Court of Appeals by Aaron E. Koota, District Attorney.

Which said Notices of Appeal and the return thereto, filed as aforesaid, are hereunto annexed.

WHEREUPON, the said Court of Appeals having heard this cause argued by Mr. Nathan Z. Dershowitz, of counsel for the appellant Piccirillo, submitted by the appellant LaBello, and argued by Mr. Stanley M. Meyer, of counsel for the respondent—, and, after due deliberation had thereon, did order and adjudge that the judgment of the Appellate Division of the Supreme Court appealed from herein be and the same hereby is affirmed.

And it was also further ordered, that the records aforesaid, and the proceedings in this Court, be remitted to the Supreme Court of the State of New York, there to be proceeded upon according to law.

THEREFORE, it is considered that the said judgment be affirmed, as aforesaid.

And hereupon, as well the Notices of Appeal and return thereto aforesaid as the judgment of the Court of Appeals aforesaid, by it given in the premises, are by the said Court of Appeals remitted into the Supreme Court of the State of New York before the Justices thereof, according to the form of the statute in such case made and provided, to be enforced according to law, and which record now remains in the said Supreme Court, before the Justices thereof, &c.

s/ Raymond J. Cannon

Clerk of the Court of Appeals
of the State of New York

COURT OF APPEALS, CLERK'S OFFICE,)
)
ALBANY, APRIL 24, 1969.)

I HEREBY CERTIFY, that the preceding record contains a correct transcript of the proceedings in said cause in the Court of Appeals, with the papers originally filed therein, attached thereto.

/s/ Raymond J. Cannon
[SEAL] Clerk

IN THE COURT OF APPEALS OF THE STATE OF NEW YORK

THE PEOPLE OF THE STATE OF NEW YORK, RESPONDENT

v.

ANTHONY LA BELLO and RALPH PICCIRILLO, APPELLANTS

OPINION—Decided April 24, 1969.

KEATING, J. Called before a Grand Jury investigating a conspiracy to intimidate witnesses who were to testify at a probe of violations of law involving public contracts, appellants, who had previously been convicted of assaulting one of the witnesses, were granted immunity (former Penal Law, § 2447). They then answered all the questions, admitting that they had been hired to commit the assault, but denying that they knew who their principals were.

Four days after appellants testified, the policeman who had arrested appellants was called before the same Grand Jury. During the course of his testimony he told of appellants' attempt to bribe him not to be a witness against them and "to get rid of the evidence." This offer of a bribe was immediately reported to the District Attorney's office.

Appellants were thereafter indicted for bribery and convicted, on their pleas of guilty, of attempted bribery. Prior to their pleas, however, they moved for inspection of the Grand Jury minutes on the ground that they had been granted immunity from prosecution for the crime with which they were then being charged. Appellants were furnished with the minutes, but their motion to dismiss the indictment was denied. On appeal, the Appellate Division affirmed, one Justice dissenting.

The principal questions are two. The first is whether the immunity encompassed the crime charged in the present indictment. The second is whether appellants were the targets of the investigation and, if the answer is in the affirmative, does this require the dismissal of the indictment? We hold that the immunity only bars

the use of the appellants' testimony or any fruits thereof. Since the police officer's testimony was in no way derived from anything said by appellants to the Grand Jury and itself established a *prima facie* case of bribery, the indictment was, therefore, based on sufficient and untainted evidence. Whatever testimony by appellants might be considered of some relevance to the bribery charge may properly be deemed harmless error (*Chapman* v. *California*, 386 U. S. 18). Likewise, we consider it immaterial whether or not appellants were the "targets" of this investigation.

The problem here arises from the confusion which has until recently existed concerning the scope of the immunity which the Constitution mandates must be given before a witness is required to yield his privilege against self incrimination. The source of the difficulty is an ambiguity in the Supreme Court's opinion in *Counselman* v. *Hitchcock* (142 U. S. 547 (1892)). In *Counselman* the Supreme Court held unconstitutional a Congressional immunity statute which only immunized the use of the actual testimony. The statute did not protect the witness against the "fruits" of his testimony. Therefore, the immunity was not co-extensive with the security which the privilege affords. There was nothing to prevent the Government from using the testimony as a starting point for further investigation through which the discovery of additional incriminatory evidence might be procured. It was the statute's failure to protect the witness against the indirect use of his compelled testimony which made it constitutionally deficient.

The entire weight of the decision was that the Fifth Amendment prohibited the direct or indirect use of the testimony (142 U. S. 547, 564, 585-586). At the close of the opinion, however, there was a dictum to the effect that an immunity statute "must afford absolute immunity against future prosecution for the offense to which the question relates" (142 U. S., at pp. 585-586).

Perhaps responding to this dictum Congress, shortly after the *Counselman* decision, passed, as part of the Interstate Commerce Act, a broadly phrased immunity law which has been interpreted by the Federal courts to

grant what is commonly referred to as a "transaction" immunity. This barred the Government from prosecuting the defendant for any crime mentioned by the witness during the course of his testimony. The constitutionality of the enactment was upheld in *Brown* v. *Walker*, (161 U. S. 591 [1896]).

Time has shown that this "transaction" immunity type of statute was unnecessarily broad, that it gives witnesses an immunity not required by the Constitution and that it has the effect of giving an unnecessary "gratuity" to crime. Where the People have a completely good case against a defendant without his testimony, there is not a single sound policy reason, nor is there a constitutional compulsion, requiring that a grant of immunity gain a witness complete freedom from criminal liability for his wrongful acts simply because the acts were at some point mentioned to the Grand Jury. (*People* v. *Laino*, 10 N Y 2d 161, 173). If he is protected from the use of his testimony or the fruits thereof, he loses nothing if he is then convicted on independent and untainted evidence.

In our view, the Supreme Court's decision in *Murphy* v. *Waterfront Comm.* (378 U. S. 52) has finally resolved the ambiguity raised in *Counselman* on the necessary scope of an immunity statute. (See, also, *Gardner* v. *Broderick*, 392 U. S. 273.) Following *Malloy* v. *Hogan* (378 U. S. 1), which made the self incrimination privilege applicable to the States, the Supreme Court was immediately confronted with the problem of how to accommodate the possible conflicts among criminal law enforcement agencies arising from our Federal system. The court in *Murphy* held that, as a consequence of its holding in *Malloy*, the Federal authorities would be barred from any prosecutional use of State "compelled testimony and its fruits" where a witness is granted immunity after asserting his privilege (378 U. S., at p. 79). No transaction immunity was granted as the footnote to Justice GOLDBERG'S opinion at this point makes patent: "Once a defendant demonstrates that he has testified, under a state grant of immunity, to matters related to the federal prosecution, the federal authorities have the

burden of showing that their evidence is not tainted by establishing that they had an independent, legitimate source for the disputed evidence."

Thus only a restriction on use is required. Of significance here is the constitutional basis of the decision. It does not rest upon the Supreme Court's supervisory power over the administration of justice in the Federal courts. (See concurring opn. of Justice HARLAN [378 U. S., at pp. 80-81].) Justice WHITE'S concurring opinion specifically emphasizes this very point that the Constitution requires only a prohibition from use not an absolute immunity (378 U. S., at pp. 92-93). Subsequent decisions of the court reinforce the conclusion that the essence of a valid immunity statute is that it must preclude the use in any manner of the compelled testimony and that is all. (*Gardner* v. *Broderick*, 392 U. S. 273, 278, *supra*; *Sanitation Men* v. *Sanitation Comr.*, 392 U. S. 280, 284; see *United States* v. *Blue*, 384 U. S. 251, 255; see, also, discussion in *Marchetti* v. *United States*, 390 U. S. 39, 58-60 [HARLAN, J.] and in *Grosso* v. *United States*, 390 U. S. 62, 81-83 [WARREN, Ch. J.]; cf. *Stevens* v. *Marks*, 383 U. S. 234, 244-245 [DOUGLAE, J.], 249 [HARLAN, J.].)

New York's law has had a similar confused history in this area (*People ex rel. Lewisohn* v. *O'Brien*, 176 N. Y. 253; *People ex rel. Lewisohn* v. *Court of General Sessions*, 96 App. Div. 201, affd. 179 N. Y. 594; *Matter of Doyle*, 257 N. Y. 244; see, also, discussion in Law Revision Commission Report (N. Y. Legis. Doc., 1942, No. 65[I], pp. 50-54). These cases are based on the absolute immunity interpretation of the *Counselman* case. As a consequence, section 2447 of the former Penal Law, which became law in 1953, parallels in language the Federal statutes which have been interpreted to grant an absolute immunity. There are dicta in the cases which would indicate that section 2447 of the former Penal Law is to be interpreted in a similar manner (*People* v. *Ianniello*, 21 N Y 2d 418, 424-425; see, also, *People* v. *Laino*, 10 N Y 2d 161, *supra*; *People* v. *De Feo*, 284 App. Div. 622, 627, revd. on other grounds 308 N. Y. 595). Still there is no holding to that effect. Since the

question is still open, we should proceed to examine the issue in light of the recent clarifications of the law as to the required breadth of a valid immunity statute.

In *Heike* v. *United States* (227 U. S. 131) Justice HOLMES, writing for a unanimous court, denied immunity in circumstances where the relationship between the compelled testimony and the later charge was entirely too insubstantial. His opinion also suggests that the broad language of that immunity statute (similar to the one involved here) should be interpreted as a use restriction, not as a "transaction" immunity statute (227 U. S., at p. 142): "Of course there is a clear distinction between an amnesty and the constitutional protection of a party from being compelled in a criminal case to be a witness against himself. * * * But the obvious purpose of the statute is to make evidence available and compulsory that otherwise could not be got. We see no reason for supposing that the act offered a gratuity to crime. It should be construed, so far as its words fairly allow the construction, as coterminous with what otherwise would have been the privilege of the person concerned."

One thing is certain. The rationale of this opinion rests on the view that the Fifth Amendment only requires an "exchange", not an "immunity bath". (See Comment, 31 Brooklyn L. Rev. 157.)

A review of the history of section 2447 of the former Penal Law indicates that the broad immunity language was not a result of a policy choice, but a view that the Constitution required it. (See 1942 Report of N. Y. Law Rev. Comm., N. Y. Legis. Doc., 1942, No. 65 [I], pp. 50-54, *supra*.) There is no evidence that the Legislature felt a "transaction" immunity was a necessary aid for criminal law enforcement. In effect, a District Attorney has always had the ability to grant an absolute immunity by a decision not to prosecute for any crime where he finds it necessary to obtain the willing cooperation of a witness. But this is a conscious decision made in each instance in light of the particular factual circumstances. The "transaction" immunity, however, permits a witness to obtain by a mistake a complete pardon for all crimes although, as here, there is in the

People's possession sufficient untainted evidence to make a complete case against the witness.

Following Justice HOLMES' approach in the *Heike* case (*supra*), we conclude that the Legislature, in passing section 2447, did not intend it was to be an amnesty statute, but desired to afford witnesses only that immunity demanded by the constitutional privilege. Specifically, section 2447 of the former Penal Law (see, Code Crim. Pro. §§ 619-c, 619-d, 619-e) only bars the use of the witness' testimony and any evidence derived therefrom.

There is no doubt that the police officer's testimony here was based on his personal knowledge as the recipient of the bribe offer and that the Grand Jury's indictment was completely based on that testimony. Nothing appellants said indicated that a bribery attempt had occurred. Whatever evidence might have been revealed by the appellants' testimony was wholly insubstantial. Therefore, even if it be assumed that appellants' testimony was related to the bribery, the indictment was not the product of that testimony. Consequently, appellants' Fifth Amendment rights were in no way violated by this indictment.

One of the appellants, Piccirillo, also argues that he was the "target" of the inquiry here and therefore the indictment must be dismissed, citing *People* v. *Steuding* (6 N Y 2d 214). We do not find it necessary to determine whether appellants were or were not the "targets" of the inquiry, here for, in our view, it is immaterial (*People* v. *Tomasello*, 21 N Y 2d 143).

Section 2447 of the former Penal Law was passed to achieve the sound purpose of preventing "immunity baths" which resulted because witnesses were not required to assert their privilege (Third Report, May 4, 1953 of N. Y. State Crime Comm., N. Y. Legis. Doc., 1953, No. 68; 1943 Report of N. Y. Law Rev. Comm., N. Y. Legis. Doc., 1943, No. 65 [B], pp. 47-49). As Judge BREITEL stated in *People* v. *De Feo* (284 App. Div., *supra*, p. 629): "It is this automatic, and what occasionally might be accidental or misguided conferring of immunity, that the new statute is designed to avoid."

Most witnesses who are subpoenaed before a Grand Jury are informed of or, at least, are aware of their privilege against self incrimination. Most also have had the opportunity to consult with counsel and are more conversant about their legal position than is the "target" of a police investigation who is picked up on the street, taken to the police station, given a perhaps perfunctory recitation of his *Miranda* rights and yet is bound by his incriminatory admissions if he then chooses to speak. There is no reason why a witness, even if he is a "target", once informed of his rights, and given an opportunity to consult counsel (*People* v. *Ianniello*, 21 N Y 2d 418, *supra*), should not be required to assert his privilege if he wishes to obtain an immunity. If he does not, his testimony should be usable against him.

Here, however, although Piccirillo did not assert his privilege, he was granted immunity before he could. The precipitous action of the Grand Jury could not operate to deny Piccirillo complete protection from any use of his testimony against him. His testimony could not furnish the basis for a finding of an indictment, and the record demonstrates that it did not.* Nevertheless, we see no justification for going any further and require the dismissal of the indictment simply because Piccirillo may be deemed to have been a target. We, therefore, hold that *People* v. *Steuding* (*supra*) should not be interpreted to require a dismissal of the indictment here.

Accordingly, the judgments of conviction should be affirmed.

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*Since Piccirillo's answers did not form the basis of the present indictment, his claim that his constitutional right to counsel was violated because he was not permitted to confer with his attorney is without merit. No prejudice did or could result for the attorney could have done nothing more for Piccirillo than to assure that he was given the immunity which in fact he did receive. Piccirillo's situation is to be distinguished from that of a witness who, denied permission to confer with his counsel, refuses to answer and is held in contempt. Such a witness might properly claim that, had he been given an opportunity to obtain advice from his lawyer, he would undoubtedly have testified, and thereby been spared a prosecution on a contempt charge.

BERGAN, J. (dissenting). It is settled constitutional law that if a man is called before a Grand Jury and questioned about material facts of a crime and gives answers on those facts, he may not thereafter be indicted by the Grand Jury on such testimony. This principle is based on a policy of protection from self incrimination (*People v. Steuding*, 6 N Y 2d 214).

The New York statute granting immunity (Code Crim. Pro., § 619-c) implements this principle by providing that when a witness refuses to answer on the ground of self incrimination the Grand Jury or other appropriate authority may confer immunity and require the answer be given. The immunity conferred is against a prosecution "on account of any transaction, matter or thing concerning which" he gave answer (subd. 2).

In the present case the statute was not literally followed in one of the cases because one defendant (Piccirillo) had not preliminarily refused to testify on the ground of self incrimination; but the Grand Jury cut short the process by granting immunity when the defendant was called as a witness. The other defendant (La Bello) refused to testify and then was granted immunity. The basic problem, however, is the same in each case.

Whether the immunity resulted as an exercise of statutory power of the Grand Jury or not, it occurred, nevertheless, as a result of the general protection against self incrimination and hence defendants should not have been prosecuted on a crime concerning some essential part of which they testified before the Grand Jury.

The only remaining points are whether the testimony they gave was material to the crime for which they were indicted and whether they were then (when called before the Grand Jury) reasonably to be regarded as targets of the prosecution, as the indictment itself shows they indubitably became, when, a short time after, they were indicted.

Long before the time they were called before the Grand Jury, and contemporaneously with the attempted bribery, a report of that crime had been made to the District Attorney by the police and it was the District Attorney's

duty to prosecute for that crime. Thus, when defendants were called before the Grand Jury they were cast in the dual role of witnesses and probable defendants.

But they were also asked material questions having relevancy to the attempt to bribe the policeman to get rid of one of the weapons which was material evidence in the other criminal charge. On this charge, reported by the police a year earlier, they were indicted by the Grand Jury which heard them as witnesses.

Each defendant testified to the description of the tire irons which had been used in the assault. The police witness then brought the tire irons physically before the Grand Jury and testified that defendants had offered a bribe to him if he would, as he said, "get rid of one of the weapons * * * get rid of the evidence".

The relevancy of their testimony to the charge on which they were indicted is manifest. That they had committed the crime concerning which they sought to bribe the policeman not to testify was a basic premise of the bribery. The weapons they told the Grand Jury they had used were vital to the policeman's testimony that they had attempted to bribe him "to get rid of the evidence".

The use of their testimony could not have been inadvertent. Almost immediately after defendants' testimony the Grand Jury heard proof of a bribe in relation to the very things defendants were questioned about. The indictment for bribery followed this testimony. It is clear when they were called the People intended to seek to indict them. They were asked to testify to facts which were essential and relevant elements in the crime for which they were indicted.

The majority opinion concedes under the circumstances in this case the testimony of defendants as a matter of law "could not furnish the basis for a finding of an indictment" but adds that the record "demonstrates that it did not".

The record is not to be read this way. The attempted bribe of the policeman related to a crime for which he had arrested defendants. They testified about that crime. The bribe related to an exhibit or exhibits with which

the crime was committed. Defendants testified about them.

It is not possible on this record, then, to insulate this testimony from the resulting indictment. It has long been the settled law of New York that a prospective defendant obtained complete immunity if his testimony was material to the prosecution and was compelled (*People v. De Feo*, 308 N. Y. 595, 602-603; *Matter of Doyle*, 257 N. Y. 244; *People ex rel. Lewisohn v. O'Brien*, 176 N. Y. 253; *People v. Sharp*, 107 N. Y. 427).

The majority opinion stresses the ambiguity in construing immunity statutes and suggests that to construe them too inclusively is to give an unnecessary "gratuity" to crime. That is not the question in this present case.

The question is whether, having been asked about facts relevant to a crime in which they were probable defendants, they could thereafter be indicted by any Grand Jury for that crime.

The cited decisions of the Supreme Court in *Malloy v. Hogan* (378 U. S. 1), which equated the protection against State infringement of the privilege to a Federal infringement of it; in *Murphy v. Waterfront Comm.* (378 U. S. 52), which extended, to protect against subsequent Federal utilization, protection obtained under a State immunity law; and in *Gardner v. Broderick* (392 U. S. 273), which reversed a decision of this court (20 N Y 2d 227) upholding the discharge of a policeman for refusing to waive immunity, have little relevancy to the problem now before the court.

This present case does not involve the problem of "leads" to evidence, or the sufficiency of evidence other than that adduced from defendants. Possibly the People had enough other evidence to obtain an indictment. But, for some reason not made clear—either strategy or perfection—they adduced from the defendants themselves material evidence considered in indicting them.

The judgments should be reversed.

Judges BURKE, SCILEPPI and JASEN concur with Judge KEATING; Judge BERGAN dissents and votes to reverse in a separate opinion in which Chief Judge FULD and Judge BREITEL concur.

Judgments affirmed.

SUPREME COURT OF THE UNITED STATES

No. 630 Misc., October Term, 1969

RALPH PICCIRILLO, PETITIONER

v.

NEW YORK

ON PETITION FOR WRIT OF CERTIORARI TO THE COURT OF APPEALS OF THE STATE OF NEW YORK

On consideration of the motion for leave to proceed herein *in forma pauperis* and of the petition for writ of certiorari, it is ordered by this Court that the motion to proceed *in forma pauperis* be, and the same is hereby, granted; and that the petition for writ of certiorari be, and the same is hereby, granted. The case is transferred to the appellate docket as No. 1249 and placed on the summary calendar.

February 27, 1970

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IN THE

Supreme Court of the United States

OCTOBER TERM 1980

[redacted] 97

No. [redacted]

RALPH PICCIRILLO,

Petitioner,

—against—

NEW YORK,

Respondent.

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

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